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ABSTRACT

This handbook was written to heighten public awareness and understanding about child abuse and to serve as a practical aid for persons who work with children, who are in the field of child abuse prevention, and who are mandated to report suspected cases of child abuse under the California Child Abuse Reporting Law. It provides an overview of the laws, practices, and procedures for the prevention, detection, reporting, treatment, investigation, and prosecution of child abuse. It is designed to assist educators, health practitioners, law enforcement officers, child care workers, social workers, probation officers, and the general public in understanding their respective responsibilities under state law. The first section examines the issues of physical abuse, physical neglect, sexual abuse, emotional maltreatment, and the extent of the problem. The second section is concerned with identifying the child abuser. The third section addresses professional responsibilities for reporting child abuse by the schools, child care providers, the medical community, child welfare services, probation, law enforcement, and the legal community. The fourth section concerns prevention, intervention, and treatment, and the final section examines the role of the community. Appendices contain child abuse reporting forms; California Child Abuse Reporting Law, and sections on dependency proceedings, child abuse crimes, investigation of child abuse crimes, guidelines for investigation of child abuse in group homes or institutions, and confidentiality. (NB)

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CORRECTION to page 63: Appendix VII: Confidentialty - Access to School Records

The first paragraph should read:

> "School districts may release information from pupil records without written parental consent or judicial order in connection with an emergency. Student records information may be given to appropriate persons in connection with an emergency if the knowledge of such information is necessary to protect the health or safety or a student or other persons. (Ed. Code, § 49076, subd. (b)(1).) Thus, if police need information held by a school about a child in an emergency situation necessary to protect the health or safety of that student or another person, that school ~~must~~ may disclose the information to the police. This is a closely limited rule and, in fact, replaces a statute that had previously given more rights of disclosure to the police."

While Education Code section 49076, subdivision (b)(1), states a school may disclose information to the police, Education Code section 49077, states that "Information concerning a student shall be furnished [by a school] in compliance with a court order."

Delete Paragraph 2.

The third paragraph should read:

> "Thus, if police and others need information from school records, they need to comply with Education Code section 49076, subdivision (b)(1). When grounds for access are not clearly established, consultation with county counsel is advisable."

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Child Abuse
Prevention Handbook

For further information or additional copies of the *Child Abuse Prevention Handbook,* write:

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Cover illustration by Sandy Thornton

Introduction

It shouldn't hurt to be a kid! Yet children are hurt every day. For these children, there is no hope unless we, individually and collectively, wake up and realize that our most important duty is the protection, welfare and growth of our children.

The purpose of the *Child Abuse Prevention Handbook* is to heighten public awareness and understanding of child abuse. It also serves as a practical aid for those who work with children, those who are in the field of child abuse prevention, and those who are mandated to report under the California Child Abuse Reporting Law.

This handbook provides an overview of the laws, practices, and procedures for the prevention, detection, reporting, treatment, investigation, and prosecution of child abuse. It is designed to assist educators, health practitioners, law enforcement officers, child care providers, social workers, probation officers, and the general public in understanding their respective responsibilities under state law.

Without detection, reporting, intervention, and treatment, we are ensuring that many abused children remain victims for the rest of their lives.

Abused children don't just grow up and forget the horrors of their childhood. Child abuse can be a scar that is carried throughout life and our criminal statistics bear out the fact that the abused all too often grow up to be criminals or abusers. Studies suggest that 85 percent of convicted violent criminals were abused children.

We know that breaking the cycle of child abuse will not only protect our children, but will reduce crime now and in the future. That is why I have made the prevention of child abuse and the enforcement of child abuse laws a major priority of my administration and have mounted a focused and rational effort to tackle this issue.

In October 1984, I formed a multidisciplinary Commission on the Enforcement of Child Abuse Laws. The Commission was charged with examining California's systems for the reporting, investigation, prosecution, and prevention of child abuse, for the protection of children in licensed child day care facilities, and with recommending ways to improve each of these systems. The Commission reported its findings and recommendations to me in April 1985. We moved promptly to make those recommendations a reality, through state and federal legislative reforms, and through a series of administrative changes.

During this past year, we have made some progress. There is greater awareness of the problem. More is being done to meet it head on. But we have a long way to go.

It is with that in mind that I commend this handbook to you, in the hope that in its own way it will provide some guidance as to how to deal with this important problem.

JOHN K. VAN DE KAMP
Attorney General

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"It shouldn't hurt to be a kid. We must listen to children, protect them and nurture them. I sometimes wonder how different my life would have been if there had been someone in my childhood who was able to hear me, be with me, protect me. Someone who could have asked, 'Honey, has someone hurt you?' "

—Victim

What Is Child Abuse?

To many, child abuse is narrowly defined as having only physical implications. In reality, child abuse includes:

- Physical abuse
- Physical neglect
- Sexual abuse
- Emotional maltreatment

The *act* of inflicting injury or allowing injury to result, *rather than the degree* of injury, is the determinant for intervention. A parent or caretaker may begin by inflicting minor injuries, then may increasingly cause more serious harm over a period of time. Therefore, detecting the initial small injuries and intervening with preventive action may save a child from future permanent injury or death.

Physical injuries and severe neglect and malnutrition are more readily detectable than the subtle and less visible injuries which result from emotional maltreatment or sexual abuse. However, all categories of abuse endanger or impair a child's physical or emotional health and development and demand attention.

Indicators for suspected child abuse are presented in this publication to assist mandated reporters in meeting their responsibilities under the Child Abuse Reporting Law.

One of the most important grounds for suspecting child abuse is *when a child tells someone.* It is essential that *when a child tells a particular person who is an individual required to report child abuse, the communication is not privileged.* That individual, *by law, must* report what the child has related to him or her. This requirement applies to physical abuse, severe emotional maltreatment constituting willful cruelty or unjustifiable punishment of a child, neglect or sexual abuse. Mandated reporters who report such suspected child abuse cases have absolute immunity, both civilly and criminally, for making such reports. (See "Professional Responsibilities.")

PHYSICAL ABUSE

Physical abuse may be defined as any act which results in a nonaccidental physical injury. Inflicted physical injury most often represents unreasonably severe corporal punishment or unjustifiable punishment. This usually happens when the parent is frustrated or angry and strikes, shakes or throws the child.

Intentional, deliberate assault, such as burning, biting, cutting, poking, twisting limbs or otherwise torturing a child, is also included in this category of child abuse.

Indicators of Physical Abuse

These indicators are used to distinguish accidental injuries from suspected physical abuse:

Location of Injury

- The primary target zone for infliction of injuries is the back surface of the body from the neck to the knees. Such injuries constitute the largest percentage of identified abuse.
- Injuries from abuse are not typically located on shins, elbows, or knees.

History

The history includes all facts about the child and the injury including:

- Child states that the injury was caused by abuse.
- Knowledge that a child's injury is unusual for a specific age group (e.g., any fracture in an infant).
- Knowledge of a child's history of previous or recurrent injuries.
- Unexplained injuries (e.g., parent is unable to explain reason for injury· there are discrepancies in explanation; blame is placed on a third party; explanations are inconsistent with medical diagnosis).

Behavioral Indicators

The following behaviors may result from child abuse:

- Parent/caretaker delays seeking care for a child or fails to seek appropriate care.
- Child is excessively passive, compliant, or fearful; or at the other extreme, excessively aggressive or physically violent.
- Child and/or parent/caretaker attempts to hide injuries; child wears excessive layers of clothing, especially in hot weather; child is frequently absent from school or physical education classes.

Types of Injuries

Damage to Skin and Surface Tissues

BRUISES

Bruises resulting from abuse are found on multiple surfaces of the body, particularly the buttocks, back, genitals, and face. They may appear in a characteristic pattern, e.g., outline of hand, paired bruises from pinching, or they clearly resemble an impression of an item of jewelry (such as a ring), a disciplinary imprint (such as a paddle, switch, or coat hanger). Linear bruise marks, strap marks, or loop marks going around a curved body surface are almost always evidence of abuse.

Multiple bruises may all be of the same color, or of different colors if the injuries were sustained at different times. Red, red-blue, violaceous, black-purple, green tint, pale green, yellow, or bruises with crisp or fading margins reflect various stages of healing. When bruises reflect differences in coloration, it is useful to take color photographs of the bruises for investigation of suspected child abuse.

In cases where bruises are suspected bite marks, investigators should also be prepared to seek the expertise of forensic odontologists.

Blows from a heavy object (such as a baseball bat or fist) on soft tissue result in deep muscular bruises or hemorrhage. These are rarely discolored and, in time, may be seen on x-rays.

BURNS

The location of a burn and its characteristics (shape, depth, margins, etc.) may indicate abuse. It is important to keep in mind that children instinctively withdraw from pain. Burns without some evidence of withdrawal are highly suspect because a child will usually try to escape—which will result in splashes, uneven burns, and sometimes burns on the hands.

Scalding a child with hot liquid is the most common abusive burn. Young infants are scalded by immersion and older children by having liquids thrown or poured on them.

In contrast, when children are forcibly held in hot water, there are often sharply demarcated burns. If held in water in a "jackknife" position, only the buttocks and genitalia may be burned. If held down forcibly in a sitting position, the center part of the buttocks (if pressed tightly against the tub) is spared from burning, thus resulting in a "doughnut"-shaped burn. If the extremities are forcibly immersed in hot water, "glove" or "sock" burns to the hands or feet may result. The burns are often symmetric and an immersion line is readily evident.

"Zebra" burns also indicate abuse. Such burns result when a child is held by his or her hands and legs under a running hot faucet. The tissue on the child's abdomen and upper legs folds up, preventing burning in the creases. The resulting "zebra stripes" from scalding of exposed tissue are clearly evident.

Abuse may also be suspected when burns are pointed or deeper in the middle. This indicates that hot liquid was poured on, or a hot object (poker, utensil) pressed into the skin.

Another type of burn characteristic of abuse has the shape of a recognizable object evenly burned into the victim's skin. Such burns indicate forced contact or "branding" with, for example, the grill of an electric heater, the element of an electric stove or an iron.

Cigarette burns are difficult to diagnose, but when inflicted they are often multiple and are often found on the palms or soles. There is a searing effect, perhaps with charring around the wound.

Rope "burns" appear around wrists or ankles when children are tied to beds or other structures.

BITE MARKS

Bite marks (which may be found on any part of the body) may be described as doughnut-shaped or double horseshoe-shaped. In some bites, tooth impressions may be seen and used to identify the perpetrator. The uniqueness of the human dentition allows bite-mark evidence to be admissible in the courts of California and many other states, as well as in United States military cases.

Time is of the essence in recording bite marks as they become less distinct with time. They should be photographed by law enforcement officers on a daily basis for as long as a week. Impressions should be made, and salivary swabbings may also be taken to collect suspected bite-mark evidence.

ABRASIONS, LACERATIONS

Again, the multiplicity and location of wounds, as with bruises, should be considered. For example, lacerations under the tongue or those of a torn frenulum (the small piece of tissue connecting the gum to the lip) could be caused by falling with an object in the mouth or by the use of excessive force during feedings. Both are suspicious injuries when the victim is an infant who is still unable to stand.

Whipping a child with a belt buckle may cause lacerations resembling a "C" or "U" shape or other wounds with distinctive shapes.

Damage to Brain

HEAD INJURIES

Whenever abuse or neglect is suspected, a careful examination of the child's eyes and nervous system should be performed, looking for signs of intracranial injury. For certain groups of suspected victims, a skull x-ray may be an important part of the examination. Serious intracranial injury may occur without visible evidence of trauma on the face or scalp. Such injury may cause brain damage or death if undetected and untreated.

Head injuries are the most common cause of child abuse-related deaths and an important cause of chronic neurological disabilities.

"WHIPLASH SHAKEN INFANT SYNDROME"

The essential elements in this syndrome present an apparent diagnostic contradiction, in that intracranial and intraocular hemorrhage occur in the absence of signs of external injury to the head. Shaking, using excessive force, may produce not only these injuries, but also lesions of the long bones.

The only indicators of this symptom may be vomiting, rapidly enlarging head, and subtle neurologic signs causing the injury to go undiagnosed for years. More severe deficits, such as blindness, deafness or paralysis, may appear sooner—or may be first manifest at school age as minor neurologic deficits or learning problems.

Even death can be caused by this type of abuse. A careful post-mortem examination of every child who dies in infancy is required to detect the real cause of death and to avoid erroneous diagnoses.

Damage to Other Internal Organs

INTERNAL INJURIES

Blunt blows to the body may cause serious internal injuries to the liver, spleen, pancreas, kidneys and other vital organs and occasionally may cause shock and result in death. This is the second leading cause of death for victims of child abuse.

Detectable surface evidence of such trauma is present only about half the time. Physical indicators of serious internal injuries may include distension of the abdomen, blood in urine, vomiting, and abdominal pain.

Damage to Skeleton

FRACTURES

Any unexplained fracture in an infant or toddler is cause for additional inquiry or investigation. "Spiral" fractures of the long bones (which result from twisting forces) are almost always caused by abuse when they occur before a child begins walking.

Other fractures which raise suspicion are: "chip" fractures at the end of long bones; multiple rib fractures, especially back rib fractures; and healing or healed fractures without explanation and revealed by x-rays. X-ray bone surveys are important diagnostic tools in young suspected physical abuse victims. Radio isotope bone scans may pick up healing fractures, subperiosteal hematomas, etc.

PHYSICAL NEGLECT

Neglect is essentially the negligent treatment or maltreatment of a child by a parent or caretaker under circumstances indicating harm or threatened harm to the child's health or welfare. The term includes both acts and omissions on the part of the responsible person. California law defines two categories of physical neglect—"severe neglect" and "general neglect."

"Severe neglect" means the negligent failure of a parent or caretaker to protect the child from severe malnutrition or medically diagnosed nonorganic failure to thrive. It also includes those situations of neglect where the parent or caretaker willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered. This includes the intentional failure to provide adequate food, clothing, shelter, or medical care.

"General neglect" means the negligent failure of a parent or caretaker to provide adequate food, clothing, shelter, medical care or supervision where no physical injury to the child has occurred.

Children may also be neglected because their working parents are unable to arrange child care services to meet their needs. The shortage of affordable child care services has created a class of children known as "latchkey children." They are left unsupervised during the hours when they are out of school and their parents are working. However, they have been given a key to let themselves into their homes after school. Parents of latchkey children may be unable to locate affordable child care or, in other cases, they may not consider the need for child care because they consider their children "old enough" or their children consider themselves "old enough" to be left on their own. Although these parents may not regard themselves as child abusers, leaving young children without supervision constitutes "general neglect." Children left in these circumstances may also be particularly vulnerable to accidents, injuries, or crime.

Indicators of Neglect

Neglect may be suspected if the following conditions exist:

- The child is lacking adequate medical or dental care.
- The child is always sleepy or hungry.
- The child is always dirty, demonstrates poor personal hygiene or is inadequately dressed for weather conditions.
- There is evidence of poor supervision (repeated falls down stairs; repeated ingestions of harmful substances; a child cared for by another child); the child is left alone in the home, or unsupervised under any circumstances (left in car, street, etc.).
- The conditions in the home are unsanitary (garbage, animal or human excretion).
- The home lacks heating or plumbing.
- There are fire hazards or other unsafe home conditions.
- The sleeping arrangements are cold, dirty or otherwise inadequate.
- The nutritional quality of food in home is poor.

- Meals are not prepared (children snack when hungry).
- There is spoiled food in refrigerator or cupboards.

While some of these conditions may exist in any home environment, *it is the extreme* or *persistent* presence of these factors that indicate some degree of neglect.

Extreme conditions resulting in an "unfit home" constitute "severe neglect" and may justify protective custody and dependency proceedings under Welfare and Institutions Code section 300 (see Appendix III), as well as criminal neglect charges. Disarray and an untidy home do not necessarily mean the home is unfit.

Psychosocial Failure to Thrive

Infants or young children who are much smaller than would be expected at a particular age can be a difficult diagnostic problem for physicians. After excluding those infants who are small because they were small at birth, there remains a large group of infants with low weights (and perhaps short lengths and small head circumferences). Most of these children are small because of a failure to meet their nutritional needs and/or failure to meet their emotional needs. These children may also demonstrate delayed development and abnormal behavior. Some of the small children, however, do have hidden medical problems. Hospitalization may be required to screen for significant medical illness and, more important, to see if the child responds to adequate nutrition and a nurturing environment with a rapid weight gain and more appropriate behavior. Evaluation consists of more than weighing and measuring the baby. The behaviors of the child and the parent should be observed, ideally during feeding, and the child's response to feeding should be noted.

If left untreated, the health or person of the child may be endangered, and emotional disorders, school problems, retardation and other forms of dysfunction may result.

SEXUAL ABUSE

Sexual abuse is defined as acts of sexual assault on and sexual exploitation of minors. Sexual abuse encompasses a broad spectrum of behavior and may consist of many acts over a long period of time (chronic molestation), or a single incident. Victims range in age from less than one year through adolescence. Specifically, sexual assault includes: rape, rape in concert, incest, sodomy, lewd or lascivious acts upon a child under 14 years of age, oral copulation, penetration of a genital or anal opening by a foreign object, and child molestation. Sexual exploitation includes conduct or activities related to pornography depicting minors, and promoting prostitution by minors. (See Appendix IV for a detailed review of these crimes.)

The nature of sexual abuse, the guilt and shame of the child victim, and the possible involvement of parents, stepparents, friends, or other persons in a child caretaker role, make it extremely difficult for children to come forward to report sexual abuse. Yet despite these problems, reports of sexual abuse made to child protective agencies continue to increase. This increase is usually attributed to the passage of the Child Abuse Reporting Law, the public's increased concern for the child victim, and the detection and reporting by professionals.

Sometimes a child who does seek help is accused of making up stories, since many people cannot believe that the apparently well-adjusted person involved could be capable of sexual abuse. When the matter does come to the attention of authorities, the child may give in to pressure from parents/caretakers and deny that any sexual abuse has occurred. Even if protective attention is gained, the child may feel guilty about "turning in" the abuser or breaking up the family and, consequently, withdraw the complaint. This process leads many to be skeptical of a child's complaint of sexual abuse, and leaves him or her feeling helpless and guilty for causing so much trouble.

The sad reality of sexual abuse is that without third-party reporting, the child often remains trapped in secrecy by shame, fear and the threats of the abuser.

Indicators of Sexual Abuse *

Sexual abuse of a child may surface through a broad range of physical, behavioral, and social symptoms. Some of these indicators, taken separately, may not be symptomatic of sexual abuse. They are listed below as a guide, and should be examined in the context of other behavior(s) or situational factors.

* Information taken from *State Medical Protocol for Examination, Treatment, and Collection of Evidence From Sexual Assault Victims*, developed and distributed by the State Office of Criminal Justice Planning, 1985.

History

- Child reports sexual activities to a friend, classmate, teacher, friend's mother, or other trusted adult. The disclosure may be direct or indirect, e.g., "I know someone"; "What would you do if?"; "I heard something about somebody." (It is not uncommon for the disclosure by children experiencing chronic or acute sexual abuse to be delayed.)
- Child wears torn, stained, or bloody underclothing.
- Knowledge that a child's injury/disease is unusual for the specific age group.
- Knowledge of a child's history of previous or recurrent injuries/diseases.
- Unexplained injuries/diseases (e.g., parent unable to explain reason for injury/disease); there are discrepancies in explanation; blame is placed on a third party; explanations are inconsistent with medical diagnosis.
- A young girl is pregnant and has a sexually transmitted disease.

Behavioral Indicators

- Sexual behaviors of children.
  - Detailed and age-inappropriate understanding of sexual behavior (especially by younger children).
  - Inappropriate, unusual or aggressive sexual behavior with peers or toys.
  - Compulsive masturbation.
  - Excessive curiosity about sexual matters or genitalia (self and others).
  - Unusually seductive with classmates, teachers, and other adults.
  - Prostitution or excessive promiscuity.
  - Excessive concern about homosexuality (especially by boys).
- Behavioral indicators in younger children.
  - Enuresis.
  - Fecal soiling.
  - Eating disturbances (overeating, undereating).
  - Fears, phobias, overly compulsive behavior.
  - School problems or significant change in school performance (attitude and grades).
  - Age-inappropriate behavior (pseudomaturity or regressive behavior such as bedwetting or thumb sucking).
  - Inability to concentrate.
  - Sleeping disturbances, e.g., nightmares, fearful about falling asleep, fretful sleep pattern, sleeping long hours.
- Behavioral indicators in older children and adolescents.
  - Withdrawal.
  - Clinical depression.
  - Overly compliant behavior.
  - Poor hygiene or excessive bathing.
  - Poor peer relations and social skills, inability to make friends.
  - Acting out, runaway, aggressive or delinquent behavior.
  - Alcohol or drug abuse.
  - School problems, frequent absences, sudden drop in school performance.
  - Refusal to dress for physical education.
  - Nonparticipation in sports and social activities.
  - Fearful of showers/restrooms.
  - Fearful of homelife demonstrated by arriving at school early or leaving late.
  - Suddenly fearful of other things (going outside, participating in familiar activities).
  - Extraordinary fear of males (in cases of male perpetrator and female victim).
  - Self-consciousness of body beyond that expected for age.
  - Sudden acquisition of money, new clothes or gifts with no reasonable explanation.
  - Suicide attempt or other self-destructive behavior.
  - Crying without provocation.
  - Firesetting.

Physical Symptoms

- Sexually transmitted diseases.
- Genital discharge or infection.
- Physical trauma or irritations to the ano/genital area (pain, itching, swelling, bruising, bleeding, lacerations, abrasions, especially if unexplained or inconsistent).
- Pain on urination/defecation.
- Difficulty in walking or sitting due to genital or anal pain.
- Stomachaches, headaches, or other psychosomatic symptoms.

Incestuous/Intrafamilial Sexual Abuse

Sexual abuse of children within the family is the most hidden, least publicized form of child abuse. In spite of its taboo nature and the difficulty of detection, some researchers believe such abuse may be even more common than physical abuse.

In discussing sexual abuse, "incest" means sexual activity between persons who are blood-related; "intrafamilial" refers to sexual activity between family members not related by blood (stepparents, boyfriends, etc.).

In most reported cases the father or another man acting as the parent is the initiator, with girls as the most frequent victims. However, boys are also victims much more often than previously believed. The embarrassment and shame used to deter girls from reporting such abuse has an even greater effect on boys since the abuse is most often homosexual.

The initial sexual abuse may occur at any age, from infancy through adolescence. However, the largest number of cases involves females under the age of 11 years. Sexual abuse is followed by guilt-provoking demands for secrecy and/or threats of terrible harm or consequences if the secret is revealed. The child will then fear disgrace, hatred or blame for breaking up the family if the secret is revealed. Regardless of how gentle or forceful or how trivial or coincidental the first approach may have been, sexual coercion tends to be repeated and to escalate over a period of years. Often the child eventually accepts the blame for tempting and provoking the abuser.

The mother, who normally would be expected to protect the child, may purposely try to stay isolated from a problem of sexual abuse. Sometimes she is distant and uncommunicative, or so disapproving of sexual matters that children are afraid to speak up. Sometimes she is insecure and the potential loss of her husband or partner and the fear of scandal are so threatening that she cannot allow herself to believe or even to suspect that her child is or could be at risk. She may have been a victim herself of child abuse and rejection and may not trust her judgment or her right to challenge the male authority. Some mothers actually know of sexual abuse; but, for whatever reason, they "look the other way."

Until the victim is old enough to realize that incest is not a common occurrence, and/or he or she is strong enough to obtain help outside the family, there is no escape.

Child Molestation

Children are also manipulated into becoming quasi-consenting partners, or noncomplaining victims by adults who consciously seek and receive their sexual gratification from them.

The concept of children as quasi-consenting partners or noncomplaining victims does not fit with society's image of an unsuspecting child being lured into a car with a candy bar. A child molester often uses pornographic literature as a device to steer a normal conversation with a juvenile toward a sexual theme. The materials are used to stimulate both the perpetrator and the victim and to assist in breaking down the inhibitions of the victim. The nature of the literature usually will correspond with the molester's particular sexual inclinations, and the models used are usually of the age he or she prefers. This is evidenced by the ever-increasing volume of pornographic material seized in investigations of sexual exploitation cases. Pamphlets which have been seized by law enforcement provide suggestions for child molesters and pedophiles about what to do, where to go and "come ons." They include cartoons depicting sexual activity to which a child can relate.

Child sexual abuse usually involves an adult, known or related to the child, although juveniles as young as 10 years of age have been identified as offenders. The offender typically uses implicit or direct coercion to involve the child in sexual activity and to secure compliance. Coercion may take the form of psychological pressure, exertion of adult authority, misrepresentation of moral standards, gifts or rewards, and sometimes force or threats. Children may cooperate because of unmet needs for love, affection and attention, or a sense of loyalty to the adult.

Child Rape

Rape is most commonly associated with adolescent victims, although forcible sexual assaults are also reported involving young children. The sexual acts are usually forced oral, vaginal, or anal penetration. Injuries may result either from the act or the force used to secure the submission of the victim. Although child rape can occur within the family, the offender is usually not known to the victim. Typically, enticement ("come and see the ducks") or abduction are used to separate and isolate the child from family and friends.

Exploitation/Child Pornography

Although it is impossible to make an exact assessment of the number of California children who have been the victims of pornographic exploitation, it is clear that by even the most conservative estimate, the number is alarmingly high.

The difficulty in assessing the number of children involved in pornography is compounded by a number of factors. First, the evidence indicates that in the vast majority of cases, this kind of sexual exploitation goes unknown to even the parents of the children. Additionally, the ever-increasing number of juvenile runaways who have migrated to California in recent years, together with the associated and growing problem of child prostitution, contribute to the difficulty in making this assessment. The runaway juvenile, alone and without support in a strange city, is a particularly attractive target for pornography or prostitution. Finally, some parents use their own children to produce pornographic material. Therefore, the only reasonable conclusion which can be drawn is that the number of children involved is substantial. Moreover, the number appears to be growing.

In recent years, police have been able to increase the number of arrests in California of persons suspected of producing and disseminating child pornography. These arrests have resulted in literally thousands of films, magazines and still photographs being seized which depict children (some as young as four years old) involved in sexual activity. However, the problem still outweighs the arrests by a large margin.

The production and distribution of pornographic material has been limited, in part, due to amendments to Penal Code sections 311.2, 311.3, 311.4 and Labor Code sections 1309.5–1309.6, which now provide essentially:

- that anyone convicted of producing, distributing, or exhibiting pornographic materials depicting a minor is guilty of a felony and punishable by imprisonment in the state prison for two, three, or four years or by a maximum fine up to $50,000 or by both fine and imprisonment (Pen. Code, § 311.2);
- that anyone convicted of developing, duplicating, or exchanging any film, photograph, videotape, negative or slide depicting a child under 14 years of age engaged in defined sexual conduct is guilty of a misdemeanor punishable by imprisonment in the county jail for not more than one year or by a fine of up to $2,000 or by both fine and imprisonment (Pen. Code, § 311.3);
- that anyone convicted of promoting, employing, using or coercing a minor under age 17 to perform a sexual act in a film or photograph is guilty of a felony and punishable by imprisonment in the state prison for three, six or eight years (Pen. Code, § 311.4); and
- that wholesale distributors of films depicting minors engaged in defined sexual conduct must keep records indicating names and addresses of those from whom the material is obtained (producers). Failure to keep such records for the specified time period is a misdemeanor offense which is punishable by a maximum $5,000 fine for each violation (Lab. Code, §§ 1309.5–1309.6).

All mandated reporters are required to report suspected sexual exploitation, which is defined to include Penal Code sections 311.2, 311.3, and 311.4, which were previously discussed. In addition, 1982 legislation amended the Child Abuse Reporting Law (Pen. Code §§ 11165, subd. (1), and 11166, subd. (c)) to also include, as mandated reporters, "any commercial film and photographic print processor who has knowledge of or observes, within the scope of his or her professional capacity or employment, any film, photograph, videotape, negative or slide depicting a child under the age of 14 years engaged in an act of sexual conduct. . . ."

(For further details on these laws, see Appendix IV.)

EMOTIONAL MALTREATMENT

Abuse

Just as physical injuries can scar and incapacitate a child, emotional maltreatment can similarly cripple and handicap a child emotionally, behaviorally and intellectually. Severe psychological disorders have been traced to excessively distorted parental attitudes and actions. Emotional and behavioral problems, in varying degrees, are very common among children whose parents abuse them emotionally.

Excessive verbal assaults (belittling, screaming, threats, blaming, sarcasm), unpredictable responses (inconsistency), continual negative moods, constant family discord and double-message communication are examples of ways parents may subject their children to emotional abuse.

Behavioral Indicators of Children

Emotional abuse may be suspected if the child:

- Is withdrawn, depressed and apathetic.
- "Acts out," and is considered a "behavior problem."
- Is overly rigid in conforming to instructions of teachers, doctors and other adults.
- Displays other signs of emotional turmoil (repetitive, rhythmic movements; inordinate attention to details; no verbal or physical communication with others).
- Unwittingly makes comments such as, "Mommy always tells me I'm bad."

The behavior patterns mentioned may, of course, be due to other causes, but the suspicion of abuse should not be precluded.

Behavioral Indicators of Parents/Caretakers

A child may become emotionally distressed when:

- Parents/caretakers place demands on the child which are based on unreasonable or impossible expectations or without consideration of the child's developmental capacity.
- The child is used as a "battleground" for marital conflicts.
- The child is used to satisfy the parent's/caretaker's own ego needs and the child is neither old enough nor mature enough to understand.
- The child victim is "objectified" by the perpetrator, i.e., the child is referred to as "it" ("it" cried; "it" died).

Emotional abuse can be seen as proving a self-fulfilling prophecy. If a child is degraded enough, the child will begin to live up to the image communicated by the abusing parent or caretaker.

Emotional abuse cases are extremely difficult to prove, and *accumulative documentation by witnesses is imperative.* Such cases should be referred to treatment as soon as possible.

Only suspected cases of severe emotional abuse that constitute willful cruelty or unjustifiable punishment of a child are required to be reported by mandated reporters. However, mandated reporters *may* report any degree of emotional abuse.

Deprivation

Emotional deprivation has been defined as ". . . the deprivation suffered by children when their parents do not provide the normal experiences producing feelings of being loved, wanted, secure and worthy."

Behavioral Indicators of Emotional Deprivation

Emotional deprivation should be suspected if the child:

- Refuses to eat adequate amounts of food and is thus very frail.
- Is unable to perform normal learned functions for a given age, e.g., walking, talking, etc.
- Displays antisocial behavior (aggression, disruption) or obvious "delinquent" behavior (drug abuse, vandalism); conversely, the child may be abnormally unresponsive, sad or withdrawn.
- Constantly "seeks out" and "pesters" other adults (such as teachers, neighbors, etc.) for attention and affection.
- Displays exaggerated fears.

When parents ignore their children, whether because of drugs or use of alcohol, psychiatric disturbances, personal problems or other preoccupying situations, such as outside activities, serious consequences may occur. However, these situations are not reportable unless they constitute a form of legally defined abuse.

THE EXTENT OF THE PROBLEM

On the basis of existing information, national estimates indicate that over one million American children are suffering from abuse and/or neglect at any given time and that approximately one-quarter of these will be injured for life as a result. The number of reported cases of child abuse and neglect has been increasing steadily in the last several years. It is uncertain whether this trend reflects an actual increase in the number of children being mistreated, an increase in public awareness, an increase in the number of people willing to report, or a combination of all three.

In reviewing available data from a variety of sources, it is generally recognized that a great deal of reported abuse and neglect is committed against children under four year of age. The probability that child abuse and neglect is a leading cause of childhood deaths seems to be generally accepted. However, official state and national statistics identify causes of death from abuse and neglect mainly in medical terms (per "International Classification of Diseases" listings). For instance, a child whose death is officially recorded as pneumonia may, in fact, have contracted the illness as a result of being poorly clothed, fed, bedded or medically neglected. Thus, many child abuse experts feel that abuse or neglect may well be the underlying cause in many cases where the cause is medically described.

However, the problem of adolescent abuse is often underestimated. For a variety of reasons, adolescents are frequently bypassed in the child welfare system. First of all, they are considered to be less "at risk" than younger children who can be severely injured by parents or caretakers. Second, adolescents are seen as having options increasingly available. They are not considered as helpless as younger children. They are able to leave the house until the parent/caretaker "calms down." The adolescent can fight back or, in some cases, "take it" with only temporary discomfort. However, many of the child prostitutes or the youngsters involved in alcohol and drug abuse are victims of physical or sexual abuse and neglect at home. Thus, adolescents may have more options, but they are not necessarily positive options. Adolescent abuse remains a serious problem which deserves attention and action.

The gathering of information and statistics is recognized as a problem at most levels of government. Efforts, however, are being made to develop systems which will reflect more accurately the scope and degree of child abuse and neglect.

The number of suspected child abuse cases reported and investigated in California has steadily risen over the years as a result of the Child Abuse Reporting Law and the increased attention paid to the problem by professionals and the public. The Department of Justice Child Abuse Central Registry only represents the portion of child abuse cases investigated, excluding cases of "general neglect" which are reported directly to child welfare (protective) services.

From 1981 to 1983, the Department of Justice Child Abuse Central Registry indicated a dramatic increase in the number of cases investigated: cases of physical abuse increased 100 percent; cases of sexual abuse increased 45 percent; and cases of neglect increased 58 percent. The 1984 data showed that there was a slight decline in the total number of cases investigated, and an increase in number of investigated cases of sexual abuse. A breakout into categories for the 1984 cases indicated that 47.1 percent were physical abuse, 18.1 percent were "severe" neglect, and 35.8 percent were sexual abuse.

Who Are the Child Abusers?

Child abuse occurs in all cultural, ethnic, occupational and socio-economic groups. Although many people assume that parents are the only culprits, it is important to remember that children can become victims of abuse by persons in nonparental relationships, such as family friends, neighbors, acquaintances, strangers, etc. Abusers may also be those trusted to care for our children, such as teachers, child care providers, foster parents, etc. Abusers may be male or female and they may be adults, adolescents, or children.

Early identification, reporting, and intervention are essential and vital to protect the child victim because abusers are typically recidivists who will repeat the abuse and may escalate or increase its frequency.

Studies indicate that a variety of factors are associated with child abuse. Many of these factors apply to and characterize the general population (such as social isolation, transiency and other factors discussed in this section). Child abuse is seldom the result of any single factor. Rather, a combination of circumstances and personality types may precipitate an act of abuse. For example, the existence of one or more of the following factors could trigger abusive acts: emotional stress, such as marital or employment problems; a predisposition toward maltreatment (perhaps as a result of having been an abused, molested or neglected child); a lack of constructive outlets for tension, anger or aggression; or poor impulse control.

Many people cannot understand how child abuse occurs in a family. Frequently, abusing parents or caretakers themselves have experienced child abuse. Consequently, they often create the same destructive environment for their children that their parents provided for them. Without intervention, these negative life patterns can continue for generations.

There are many who believe that all corporal punishment is abusive. There are others who believe it is a useful method of discipline under restrained conditions. Discipline and punishment are not the same and corporal punishment is not legally defined as abuse unless it results in injury.

The combination of physical punishment and rage is ineffective as a disciplinary tool and can be deadly. Many experts agree that while physical punishment and rage have the immediate effect of interrupting the child's behavior, the deterrent effect is not long-term. In addition, the use of excessive corporal punishment may teach a child to resolve conflicts violently and to use physical power rather than reason to obtain results or to express anger.

Abusing parents often reverse roles with their children. That is, they expect and demand love and care from their offspring, but have difficulty in returning these emotional necessities to their children. These parents are either crippled from child abuse experiences of their own or simply lack understanding of children's basic needs and capabilities.

Studies have shown that a mother may be more likely to abuse or neglect her child if the early bonding between mother and child immediately after birth is disturbed by separation. This separation may be caused by the prolonged hospitalization of the mother or the child and results when children are born prematurely, by Caesarean section, or with an illness, physical defect, or disfigurement. Also, a child viewed as different or slow often becomes a scapegoat.

In the intimacy of family life, especially at times of stress or when adult relationships are poor, sexual abuse may occur. A child can easily be made to believe that sex is a special game or a normal and necessary part of being loved and accepted. An older child can be convinced that he or she is at fault for seducing the parent/caretaker.

The abuser may convince himself that he has a duty to "show the child the facts of life." He may believe he is more loving and caring than outsiders who might "spoil" or mistreat the child. He may feel so stressed, neglected, or needy himself that he feels compelled to exploit the only supporting, loving relationship he can find. Although some adults may believe their conduct is blameless, the harm done to the child remains the same whenever sexual abuse is committed.

Family stress, created by difficulties in obtaining the basic necessities of life—including food, shelter, clothing, medical care and education—may cause parents to be less capable of providing adequately for the physical and emotional needs of their children. In struggling for survival, such a parent may be incapable of resolving difficult situations rationally and abuse of children may occur. Such situational stress does not constitute justification or legal defense for child abuse, but must be taken into consideration by agencies that become involved in determining appropriate protective measures against future harm of the child and/or treatment and proper punishment for the child abuser.

Child abuse and neglect has also been related to the decline of the "extended" family, the increase in single-parent households, and the shortage of affordable child care options. An extended family is best described as that in which a number of immediate relatives reside in the same household or live close by and are readily available in times of need. Today's family, in contrast, has few relatives close enough to provide immediate support. Without an extended family, there may be fewer sympathetic ears listening and helping with frustrations and fewer persons to assist parents with child rearing. Mobility and the degree of transiency characteristic of today's society also means parents have fewer close friends upon whom to depend. Abusing families have a tendency toward social and emotional isolation and may lack constructive outlets for tension, anger, or agression.

These factors, circumstances, and personality types, regardless of culture, ethnicity, occupation, or socio-economic group, are typical characteristics of child abusers.

Professional Responsibilities

REPORTING CHILD ABUSE

The Reporting Law

While *everyone* should report suspected child abuse and neglect, Article 2.5 of the Penal Code provides that it is a crime for certain professionals and laypersons who have a special working relationship or contact with children *not* to report suspected abuse to the proper authorities. Following are excerpts and summaries of sections from the Child Abuse Reporting Law (see Appendix II for full text):

> *". . . any child care custodian, medical practitioner, nonmedical practitioner, or employee of a child protective agency who has knowledge of or observes a child in his or her professional capacity or within the scope of his or her employment whom he or she reasonably suspects has been the victim of child abuse shall report the known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident. For the purposes of this article, 'reasonable suspicion' means that it is objectively reasonable for a person to entertain such a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect child abuse." (Pen. Code, § 11166.)*

Failure to report by telephone immediately or as soon as practically possible and in writing within 36 hours is a misdemeanor "punishable by confinement in the county jail for a term not to

exceed six months or by a fine of not more than $1,000 or by both." (Pen. Code, § 11172, subd. (d).) Basically, this penalty ensures that those required to do so will report all suspected incidents of child abuse immediately to a child protective agency (the local police or sheriff's department, juvenile probation department or the county welfare department). For those required to report who do not do so, there may also be civil liabilities. (See "Medical Community" for a discussion of the *Landeros* v. *Flood* case.)

Those required to report should be aware that mere reporting does not necessarily mean that a civil or criminal proceeding will be initiated against the suspected abuser.

The written reports that mandated reporters must submit within 36 hours must be on a Department of Justice form (DOJ SS 8572). Professional medical personnel are also required to submit a medical report (DOJ 900). Child protective agencies are required to provide these forms to mandated reporters. (Pen. Code, § 11168.) (See Appendix I for forms.)

The reporting law requires a cross-report from the child protective agency first receiving the report to other child protective agencies and to the district attorney. All cross-reports are to be made *by telephone* immediately or as soon as practically possible and *in writing* within 36 hours using the required forms. (Pen. Code, § 11166, subd. (g).)

Those agencies to whom reports are made are required to forward to the Department of Justice Child Abuse Central Registry a "preliminary report in writing of every case of known or suspected child abuse which it investigates," whether or not any formal action is taken in the case. Reports must be made on Department of Justice forms. (Pen. Code, § 11169.)

It should be noted that implementation of the reporting requirements and handling of child abuse and neglect cases may vary from county to county.

The reporting duties of a mandated reporter are individual, and cannot be delegated to another individual. Supervisors or administrators may not impede or inhibit reporting by a mandated reporter, nor may they take any actions against the reporter for making a report. However, it is permissible to establish internal procedures to facilitate reporting and apprise supervisors and administrators of reports so long as these procedures are not inconsistent with the reporting law. (Pen. Code, § 11166, subd. (f).)

If two or more mandated reporters are present in a situation, such as an emergency room, and jointly become aware of a known or suspected instance of child abuse, they may by mutual agreement designate one of themselves to make the required telephone and written reports. However, if a mandated reporter becomes aware that the designated individual failed to report, he or she must then report. (Pen. Code, § 11166, subd. (e).)

Who Reports?

Those professionals required to report by Penal Code sections 11165 and 11166 are "child care custodians," "medical practitioners," "nonmedical practioners," "employees of child protective agencies," and "commercial film and photographic print processors." These are defined as:

- ***"Child care custodian"*** means a teacher, administrative officer, supervisor of child welfare and attendance, or certificated pupil personnel employee of any public or private school; an administrator of a public or private day camp; a licensee, an administrator or an employee of a community care facility licensed to care for children; headstart teacher; a licensing worker or licensing evaluator; public assistance worker; employee of a child care institution including, but not limited to, foster parents, group home personnel and personnel of residential care facilities; a social worker or a probation officer.

  Employees of community service programs or organizations for abused or neglected children under contract or agreement with a county to provide shelter, care or counseling are also considered "child care custodians." (Welf. & Inst. Code, § 307.5.)

- ***"Medical practitioner"*** means a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, or any other person who is currently licensed under Division 2 (commencing with section 500) of the Business and Professions Code, any emergency medical technician I or II, paramedic or other person certified pursuant to Division 2.5 (commencing with section 1797) of the Health and Safety Code, or a psychological assistant registered pursuant to section 2913 of the Business and Professions Code.

- ***"Nonmedical practitioner"*** means a state or county public health employee who treats a minor for venereal disease or any other condition; a coroner; a marriage, family or child counselor; or a religious practitioner who diagnoses, examines or treats children.
- ***"Child protective agency"*** means a police or sheriff's department, a county probation department or a county welfare department.
- ***"Commercial film and photographic print processor"*** means any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term includes any employee of such a person; it does not include a person who develops film or makes prints for a public agency.

These mandated reporters are provided immunity from civil or criminal liability as a result of making a required or authorized report of known or suspected child abuse. Other persons who report are not liable either civilly or criminally, unless it can be proven that a false report was made and that the person knew that the report was false. (Pen. Code, § 11172, subd. (a).)

In the event a civil action is brought against a mandated reporter as a result of a required or authorized report, he or she may present a claim to the State Board of Control for reasonable attorney's fees incurred in the action if he or she prevails in the action or the court dismisses the action upon a demurrer or motion for summary judgment made by that person. The maximum hourly rate for recovery of attorney's fees is that charged by the Attorney General at the time of the award and the maximum recovery is $50,000. Public entities providing a defense pursuant to Government Code section 995 may not file a claim. (Pen. Code, § 11172, subd. (c).)

A 1984 amendment to the reporting law requires that, "Any person who enters into employment on and after January 1, 1985, as a child care custodian, medical practitioner, or nonmedical practitioner, or with a child protective agency, prior to commencing his or her employment and as a prerequisite to that employment, shall sign a statement on a form provided to him or her by his or her employer to the effect that he or she has knowledge of the provisions of section 11166 and will comply with its provisions . . . ." (Pen. Code, § 11166.5.)

Making a Report

The mandated reporter must provide his or her name and the following information when making the telephone report of suspected child abuse to the child protective agency:

- name of the child;
- present location of the child;
- nature and extent of the injuries;
- any other information which led the person to suspect child abuse requested by the child protective agency. (Pen. Code, § 11167, subd. (a).)

Within 36 hours of making the telephone report, a written report must also be filed with the child protective agency. (Pen. Code, § 11166, subd. (a).) The written report must be filed on Department of Justice Form SS 8572 which is available through county welfare and probation departments and law enforcement agencies. (See Appendix I for a sample of this form)

In addition to the standard Department of Justice form, medical personnel are required by law to complete, even absent the consent of the child's parent or caretaker, a special, uniform reporting form developed by the Attorney General entitled "Medical Report—Suspected Child Abuse" (DOJ 900). (See Appendix I for a sample of this form.)

The medical reporting form was designed to elicit a sufficient amount of data concerning suspected child abuse, but at the same time not to be unduly burdensome to reporting medical personnel and thereby discourage its use. It is also designed to be educational, as well as instructive, for medical prsonnel who come in contact with possible child abuse. The form is printed by the Department of Justice, and copies are available through county welfare departments and law enforcement agencies.

What Happens to the Reports?

Reports are investigated by either the local law enforcement agency and/or by the county child welfare (protective) services agency.

Reports received by child welfare agencies, except for reports involving "general neglect," are cross-reported immediately, or as soon as possible, to the local law enforcement agency and district attorney's office having jurisdiction. Law enforcement is also required to cross-report

immediately, or as soon as possible, to child welfare agencies and the district attorney's office. So, essentially, the reporting law is designed to ensure that the law enforcement and child welfare agencies and district attorneys receive all reports, except general neglect, whether initially reported to them or to another child protective agency. (Pen. Code, § 11166, subd. (g).) General neglect is cross-reported only to child welfare agencies.

In turn, all child protective agencies (law enforcement, welfare and probation) are required by law to file reports of known or suspected cases of child abuse in which an investigation is conducted (except "general neglect" reports) with the Child Abuse Central Registry in the Bureau of Criminal Statistics and Special Services, California Department of Justice. (Pen. Code, § 11169.)

After the report is received, the name index is searched to determine whether there is a record of prior suspected abuse involving the victim or suspect, and the case is added to the Central Registry. The reporting law enforcement agency or local juvenile probation or welfare department is notified immediately of any prior suspected abuse reports. (Pen Code, § 11170, subd. (b).)

An obvious history of abuse is not always easily spotted because child abusers tend to move or to take their children to different doctors or hospitals for treatment of each new injury. However, reports are retained in the Central Registry, whether or not any formal action is taken in the case, for the purpose of identifying a pattern of abuse not reflected in prior arrests or convictions. Therefore, the index is vital to investigatory agencies to provide information on possible prior incidents for purposes of early identification and intervention.

A child protective agency must also notify the Child Abuse Central Registry in writing of any case which is determined to be unfounded, in which a prior report was submitted. An incident can be unfounded only if it is proven to be a false report, inherently improbable, an accidental injury, or not within the definition of child abuse. If an unfounded report is filed, the initial report is removed from the registry. (Pen. Code, § 11169.)

The required form for use by child protective agencies in reporting investigated and unfounded cases to the Child Abuse Central Registry may be obtained from the Department of Justice, Bureau of Criminal Statistics and Special Services, Post Office Box 13417, Sacramento, CA 95813.

SCHOOLS

School teachers, nurses, counselors, principals, supervisors of child welfare and attendance, and other designated school personnel who are mandated to report suspected child abuse cases play a critical role in the early detection of child abuse and neglect. Symptomatic signs of abuse and/or neglect, which may include injuries, listlessness, poor nutrition, disruptive behavior, absenteeism or depression, are often first seen by school personnel. Because immediate investigation of suspected abuse by child protective agencies may save a child from repeated injuries, school personnel should not hesitate to report suspicious injuries or behavior. Their duty is to *report,* not investigate.

It has been the practice of many schools to develop special procedures for reporting child abuse. School personnel who are mandated to report should be aware, however, that regardless of the existence of such procedures, reporting to a child protective agency is still required by law and "good intentions" may not be a defense in a criminal or civil action initiated for failure to report. Furthermore, reporting is an *individual* responsibility. In those schools where personnel have been told of the potential civil liability for *not* reporting (e.g., *Landeros* v. *Flood*), the reporting of incidents has gone up. (See discussion of *Landeros* v. *Flood* in "Medical Community.") As mentioned in the reporting section, no supervisor or administrator may interfere with the individual reporting responsibility; nor may a mandated reporter be absolved of responsibility by relying on a supervisor or administrator to meet his or her individual statutory responsibility.

For example, when a person works for an organization which has policies or procedures regarding making any reports to outside agencies, the law allows an individual to report the child abuse or the suspicion of child abuse to a child protective agency without fear of reprimand or suspension for violating organizational policies. The organization can, however, ask that the employee apprise them of reports being made to a child protective agency. However, the employee cannot be prohibited or impeded from making a report directly to a child protective agency. (Pen. Code, § 11166, subd. (f).)

To help achieve uniformity and consistency in reporting practices, many county superintendents of schools have developed administrative guidelines to aid school districts with identification and reporting of child abuse. The county school offices also participate as school representatives on child abuse councils in counties throughout the state.

Schools can also play a substantial role in the prevention of abuse and neglect by offering classes on marriage, parenting and child development to students. In 1984, the Legislature authorized the establishment of a statewide school-based child abuse prevention training program modeled after the Child Assault Prevention Program, which originated in Columbus, Ohio. This new law requires that programs be funded in each county to provide child abuse prevention training in public schools directly to children, their parents, and school staff.

Parenting education is also vitally needed. Classes in parenting offered through the public school system may help break the pattern of successive generations of child abuse. Curricula for such classes are now being developed.

CHILD CARE PROVIDERS

As "child care custodians," child care providers are in a position to observe signs of possible child abuse and initiate action before the child suffers further abuse. The increase in working parents during the last 15 years has caused a growing and unmet need for affordable, quality child care. In 1984, approximately 542,000 children and their families were served by approximately 40,200 licensed child day care facilities.

In 1984, the State Department of Social Services funded a special child abuse prevention project aimed at providing the necessary linkage between the child care community and the child abuse prevention community. Special educational materials on the Child Abuse Reporting Law were developed by the California Child Care Resource and Referral Network for distribution to child care providers. These materials were designed to assist child care providers in identifying and reporting suspected cases of child abuse to child protective agencies.

Child day care facilities are licensed and regulated by the State Department of Social Services as "day care centers" and "family day care homes." The owners, administrators and employees of such facilities must meet state requirements for licensure and are considered to be "child care custodians" or mandated reporters under the provisions of the Child Abuse Reporting Law.

In 1976, the Legislature established the California Child Care Resource and Referral Network to:

- provide information and referral services to parents who are looking for child care services;
- provide technical assistance and training to potential providers and existing providers of care; and
- establish a referral agency in each county.

The California Child Care Resource and Referral Network provides an invaluable service for California parents and child care providers. In 1984, over 175,000 referrals for child care were made by the local resource and referral agencies. However, the shortage of affordable, quality child care services only provided many of these parents with access to waiting lists for child care. When parental stresses are compounded by the unavailability of affordable, quality licensed day care, some parents are more likely to abuse their children or place their children at risk of abuse, neglect, or exploitation. A short-term solution to this problem is funding for respite care. Respite care provides emergency child care services for children whose parents are under stress. County welfare departments or other service providers refer qualifying families to the local resource and referral agencies responsibile for administration of the respite care program. In addition to these services, resource and referral agencies may provide other services such as parent education and assistance in community child care planning.

Although the availability and accessibility of affordable, quality licensed day care is recognized as a long-term solution for the prevention of child abuse, recent sensational reports of child abuse in child care facilities have focused increased attention and concern for the health, safety and welfare of children in all licensed child care facilities. To improve and strengthen the state's role in protecting the health and safety of children in child day care facilities, the Legislature enacted the Child Day Care Facilities Act in 1984. (Senate Bill 1754, Chapter 1615, Statutes of 1984.) The act made significant changes to California's day care licensing provisions by separating the child care center licensing provisions from the community care facility licensing provisions, and by combining child care center and family day care home

licensing provisions under one act designed to improve and increase the state's regulatory effort.

In enacting the California Child Day Care Facilities Act, the Legislature indicated that the purposes of the act were to:

- streamline the administration of child care licensing and thereby increase the efficiency and effectiveness of the system;
- encourage the development of licensing staff with knowledge and understanding of children and child care needs;
- provide providers of child care with technical assistance about licensing requirements;
- enhance consumer awareness of licensing requirements and the benefits of licensed child care; and
- recognize that affordable, quality licensed child care is critical to the well-being of parents and children in this state. (Health & Saf. Code, § 1596.73.)

The new law established the following legal definitions for child care providers:

- ***"Child day care facility"*** is a "facility which provides nonmedical care to children under 18 years of age in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual on less than a 24-hour basis. Child day care facility includes day care centers and family day care homes." (Health & Saf. Code, § 1596.750.)
- ***"Day care center"*** is defined as "any child care facility other than a family day care home, and includes infant care facilities." (Health & Saf. Code, § 1596.76.)
- ***"Family day care home"*** is defined as "a home which regularly provides care, protection, and supervision of 12 or fewer children, in the provider's own home, for periods of less than 24 hours per day." (Health & Saf. Code, § 1596.78.)
- ***"Large family day care home"*** is defined as "a home which provides family day care to seven to twelve children, inclusive, including children who reside at the home." (Health & Saf. Code, § 1596.78, subd. (1).) To be licensed as a large family day care home, a provider must have at least one year's experience as a regulated small family day care home or as an administrator of a licensed child care center unless the director of the Department waives this requirement upon a finding that the applicant has sufficient qualifying experience. (Health & Saf. Code, § 1597.52, subd. (b).)
- ***"Small family day care home"*** is defined as "a home which provides family day care to six or fewer children, including children who reside at the home." (Health & Saf. Code, § 1596.78, subd. (2).)

For the approximately 6,800 state licensed day care centers, specific licensing provisions beyond the general licensing provisions for all child day care facilities are enforced. Standards of care for child care centers are contained in state regulations and include such factors as: director, teacher and teacher aide qualifications and duties; teacher/staff—child ratios (1 to 12; 1 to 15 for teacher and aide); immunization requirements; supervision and discipline guidelines; health-related services requirements; food service requirements; personal services requirements; and physical environments standards. There are also additional requirements for the group care of infants, including a requirement for one nursery aide to four infants.

In providing for licensure of family day care homes, the Legislature found that there is a growing need for child care facilities due to the increase in working parents, that many parents prefer child day care located in their neighborhoods in family homes, and that the state should maintain an efficient program for regulating family day care homes that ensure the provision of adequate protection, supervision and guidance to children in their homes. In 1984, there were approximately 33,400 licensed family day care homes in California.

Known or suspected instances of child abuse in a day care facility should be reported immediately to a child protective agency for investigation and a complaint should be filed immediately with the State Department of Social Services Community Care Licensing Division.

MEDICAL COMMUNITY

In providing care to children in hospital, clinic, or private settings, medical practitioners are often the first mandated reporters to become aware of known or suspected cases of child abuse.

Although the law requires doctors and nurses (and other mandated reporters previously listed) to

report abuse to a child protective agency (the police or sheriff's department, county probation or county welfare department), some people in the medical community think child abuse is a problem to be treated without involving law enforcement. The Child Abuse Reporting Law specifically provides that neither the physician-patient privilege nor the psychotherapist-patient privilege applies to any information reported pursuant to this law. (Pen. Code, § 11171, subd. (b).) Not only is failure to report a criminal offense, but it is also a grave breach of professional responsibility to both the child and parent.

Hospital staff and other medical personnel should be familiar with the indicators of child abuse contained in an earlier section of this publication. Medical personnel should also be alert to "hospital shoppers." These are people who, for no apparent reason, have brought an injured child to a hospital outside their community when their own community has fully equipped facilities. Often, this is done to cover up a pattern of abuse because medical records sometimes reveal a history of hospital or doctor "shopping" which may, in conjunction with other indicators, be indicative of suspected abuse.

Medical techniques for diagnosis are continually being developed, especially in the field of radiology. X-rays showing numerous fractures at varying degrees of healing indicate strongly that type of abuse often called the "battered child syndrome." It should be noted that specified medical personnel or their agents may take skeletal x-rays of a child, for purposes of diagnosing and determining the extent of possible child abuse, without the consent of the parent or guardian. (Pen. Code, § 11171, subd. (a).)

Other new, improved, or previously underutilized procedures which are being used by the medical community to make more accurate clinical diagnoses of child abuse include: medical photography, tests for sexually transmitted diseases, colposcopic studies on genital injuries, more accurate clinical indicators of psychosocial failure to thrive, and laboratory chemistry tests. These laboratory and technical studies are greatly augmented by a more accurate understanding of behavioral indicators from the child or those around the child. In those extreme cases of child abuse which result in suspicious child death, more accurate autopsies are being performed to detect child abuse.

Medical professionals and other mandated reporters may be subject to civil damage suits if they fail to report. In the case of *Landeros* v. *Flood* (1976) 17 Cal.3d 399, an infant, Gina, was brought into a hospital with injuries, treated and released back to her mother. Subsequently, she was treated for new and more serious injuries by a second doctor who reported the injuries as suspected child abuse. The child was made a dependent of the court and a guardian ad litem was appointed. The guardian ad litem then instituted a suit on behalf of the child against the first doctor for failure to report as required by law. The California Supreme Court reversed a lower court decision which dismissed the complaint and held that the complaint stated a cause of action based on a failure to report as required by statute. The case held that failure to perform the statutorily imposed duty to report raises a presumption that a defendant doctor failed to exercise due care. The Supreme Court sent the case back to the lower court for trial. The plaintiffs in this case sued the doctor for $2 million, plus costs. A decision for the plaintiffs would obviously have been serious for the doctor involved. In spite of the ultimate outcome of this case (the charges could not be substantiated), it is clear that medical practitioners and other persons who have a statutory duty to report may be held civilly as well as criminally liable when they fail to report suspected cases as required by law.

Welfare and Institutions Code section 318 (see Appendix III) gives the child's counsel the right to investigate all records of reported child abuse to see if mandated reporters complied with the child abuse reporting laws. The child's counsel also has the duty to recommend to the court that a civil action on behalf of the child be initiated against any mandated reporter who did not comply with the child abuse reporting laws if the child sustains *any* further injury.

Many hospitals now use a team approach to handling child abuse. Regular team members may call on other hospital specialists when needed, and act in liaison with special child abuse units of local law enforcement or child welfare services agencies. As a result of an ongoing team emphasis, significant positive changes have occurred in the identification and reporting of child abuse cases throughout the state.

To accommodate a team approach, the Child Abuse Reporting Law provides:

> *"When two or more persons who are required to report jointly have knowledge of a suspected instance of child abuse, and there is agreement among them, the telephone report may be made by a member of the team selected by mutual agreement, and a single report may be made and signed by such selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so shall thereafter have the responsibility to make the report."* (Pen. Code, § 11166, subd. (e).)

Medical professionals in other settings, clinics, venereal disease programs, drug and alcohol programs, and social service agencies are establishing programs to serve possible child abuse victims and their families. Many health facility administrators are beginning to appreciate the potential value of child abuse prevention as a component of a comprehensive health program, a necessary intervention for total preventive health care, and as a protection against suits. Integrated health systems not only help prevent future abuse, but help to stop "doctor shopping" when it may be the first sign of unrecognized child abuse.

CHILD WELFARE (PROTECTIVE) SERVICES

Within each county welfare department, there is a specialized child welfare services program designed specifically for the protection of children's welfare. Public child welfare services are the major intervention system for child abuse and neglect in California and are also one of the alternative agencies to which mandated reporters may submit reports of suspected child abuse. It should also be noted that child welfare services personnel are themselves included as professionals required to report child abuse under Penal Code section 11166.

These programs are mandated by Welfare and Institutions Code section 16500 which says that: "The state, through the department and county welfare departments, shall establish and support a public system of statewide child welfare services . . . . " Welfare and Institutions Code section 16501 describes what these programs should contain:

(1) Preplacement Preventive Services

Preplacement preventive services are those services which are designed to help children remain with their families by preventing or eliminating the need for removal. (Welf. & Inst. Code, § 16501.1.) Preplacement preventive services consist of two programs:

(a) Emergency Response Program

The Emergency Response Program is "a response system which provides immediate in-person response, 24 hours a day, seven days a week to reports of abuse, neglect, or exploitation, for the purpose of providing initial intake services and crisis intervention to maintain the child safely in his or her own home or to protect the safety of the child." (Welf. & Inst. Code, § 16501.1, subd. (a).)

(b) Family Maintenance Program

The Family Maintenance Program provides "time-limited protective services to prevent or remedy neglect, abuse, or exploitation, for the purposes of preventing separation of children from their families." (Welf. & Inst. Code, § 16501.1, subd. (b).) These services are provided for up to six months.

(2) Family Reunification Program

The Family Reunification Program provides "time-limited foster care services to prevent or remedy neglect, abuse, or exploitation, when the child cannot safely remain at home, and needs temporary foster care, while services are provided to reunite the family." (Welf. & Inst. Code, § 16501.2.) The services are provided for up to 12 months with a possible 6-month extension by the juvenile court.

(3) Permanent Placement Program

The Permanent Placement Program provides "an alternate permanent family structure for children who because of abuse, neglect, or exploitation cannot safely remain at home and who are unlikely to ever return home." (Welf. & Inst. Code, § 16501.3.) The court must consider placement in the following order of priority:

- adoption;
- legal guardianship;
- long-term foster care. (Welf. & Inst. Code, § 366.25.)

The importance of a county child welfare services' role lies in both crisis intervention and the ongoing services it provides to protect children and assist families in difficulty. Social workers perform a vital role in providing these services, which include conducting the initial assessment of reports of suspected child abuse and neglect, providing short-term protective and social services to children and families, and coordinating case plans with other agencies to maximize services to the family.

Social workers * also have the responsibility for determining if a child under 18 years of age falls within the provisions of Welfare and Institutions Code section 300:

A child under 18 years of age is subject to the jurisdiction of the juvenile court if the child comes within the following descriptions:

- No parent or guardian available, able or willing to exercise proper and effective parental care or control. (Welf. & Inst. Code, § 300, subd. (a).)
- A child who is destitute, not provided the necessities of life or a suitable home or abode. (Welf. & Inst. Code, § 300, subd. (b).)
- A child who is physically dangerous to the public because of mental or physical deficiency, disorder or abnormality. (Welf. & Inst. Code, § 300, subd. (c).)
- A child whose home is unfit by reason of neglect, cruelty, depravity, or physical abuse of either parent, guardian, or other person in whose care or custody he or she is. (Welf. & Inst. Code, § 300, subd. (d).)
- A child who has been freed for adoption for 12 months and the adoption petition or interlocutory decree has not been granted. (Welf. & Inst. Code, § 300, subd. (e).)

If the social worker has cause to believe that one of these situations exists, he or she must immediately investigate to determine whether child welfare services should be offered to the family and whether dependency proceedings should be commenced by filing a petition in the juvenile court to declare a minor a dependent of the court.

Dependency petitions can be filed regardless of whether a minor is taken into custody. Removal of the child from the parents' custody is recommended only when the child cannot otherwise be protected.

In lieu of filing a petition, a social worker may supervise the minor with the consent of the parent or guardian for a period of up to six months, with a possibility of an additional six-month extension. During this period, the social worker provides or arranges for services to attempt to ameliorate the situation which brought the minor under the court's jurisdiction. If the family does not cooperate, if the child's circumstances warrant it, or even if the family cooperates, the social worker may file a dependency petition.

In certain situations, a social worker with section 300 responsibilities may take a dependent child in need of care into custody and may receive custody of a section 300 child from a probation officer. This authority is only extended to social workers in cases of neglect if "no parent or guardian is available, able, or willing to exercise proper and effective parental care or control" or "if the child is destitute and not provided the necessities of life or a suitable home." (Welf. & Inst. Code, § 306, subd. (c).)

The primary goal of child welfare services is obviously to protect children. Whenever possible, child welfare services workers try to keep the family together and treat the family unit as a whole. Workers generally begin helping families by seeking the answers to the following types of questions:

- Who lives with the child?
- What are the sexes and ages of parents, siblings, relatives and absent parents?
- Who are the caretakers and what are their ages, relationships and sex?

* In most counties, the responsibility for dependent children has been delegated to the county welfare department by the board of supervisors under Welfare and Institutions Code section 272. In the other counties the probation departments retain this responsibility.

- What is the family income? Is the income sufficient? How is it spent?
- What is the nature of the parental relationship?
- How does the reportedly abused or neglected child interact with the parents?
- What is the length of time the family has been in the area and the frequency of moves?
- What is the condition of the home?
- Are other relatives or friends in the area?
- What is the family's knowledge of community resources? Do they utilize these resources?
- Are child care services being used, including baby sitters?
- Is there agreement between parents on child-rearing techniques?
- Is there use of corporal punishment as discipline?
- Are there any family tensions? How are they expressed?
- What is the relationship between the child and parents? (Role reversal, supportive, hostile?)
- How do family members communicate?

These child welfare services, designed to protect children and assist families, are provided to families who self-refer or are reported for child abuse and, if dependency proceedings are initiated, will be provided throughout the dependency process: the detention hearing, the jurisdiction and disposition hearings, the status hearing, the status reviews and, if necessary, the permanency planning hearing.

See Appendix III for more detailed information regarding these dependency proceedings.

PROBATION

When ordered to do so by the court, the probation department investigates adult offenders convicted of child abuse or neglect. A court report outlining the offender's social history, prior record, offense and attitude is submitted. The report also evaluates suitability for probation and, in appropriate cases, recommends probation with specific conditions aimed at control and treatment. Psychiatric or psychological treatment, family treatment and/or enrollment in self-help programs are typically recommended in these cases, along with the other standard conditions of probation.

If probation is granted, a probation officer enforces the conditions ordered by the court, monitors the offender's progress in treatment and initiates appropriate corrective action if any of the conditions are violated.

In order to assure the child's safety and welfare, the supervising officer also works cooperatively with the child welfare services worker assigned to the case. Their assessment of the child's needs and the offender's response to treatment is of significant influence in determining when, and if, the child will be returned to the home.

Juvenile probation officers in some counties are also responsible for handling all aspects of the dependency process: the detention hearing, the jurisdiction and disposition hearings, the status hearing, the status reviews and, if necessary, the permanency planning hearing.

LAW ENFORCEMENT

The importance of law enforcement's role in child abuse cases centers around the fact that child abuse is a crime, and that the primary consideration is for the protection of the child. Also, under California law, reports of suspected child abuse are made to the police or sheriff's department, or other designated child protective agencies. (Pen. Code, § 11166.)

There are also many practical and compelling factors which necessitate law enforcement's involvement, e.g., their legal authority to investigate and arrest, their perceived authority and status in the community which induces cooperation, and their ability to provide immediate response.

Law enforcement personnel are also best trained to ensure constitutional rights and due process procedures during the course of the investigation.

The responding officer will decide whether to take the child into protective custody (Welf. & Inst. Code, § 305; see Appendix III), to arrest the parents/caretakers, to seek the filing of criminal charges or to refer the case to child welfare services or another appropriate agency. Final disposition should be made after consultation with representatives of other disciplines.

When observing a family and making an assessment of their emotional relationships, it is important that the investigator's *personal biases*

and preconceptions be controlled. The investigator must differentiate between practices of child rearing which are truly harmful to children and those practices which merely reflect differences in life styles or ethnic origin.

The investigating officer seeks answers to the following types of questions when determining whether child abuse actually occurred:

- Is this an isolated incident, or is there a history of abuse, neglect or family disturbances? (Verification of prior reports can be made through record checks.)
- Is there perceived danger to the child or other children in the home?
- How was the incident reported? Who reported, if known?
- What is the emotional and mental attitude of the parents?
- What is the general condition of the home?
- Are the nature and severity of injuries indicative of abuse or neglect?
- What is the general behavior of the parents?
  - Are the explanations of the child's injuries inadequate?
  - Do the parents/caretakers vehemently place the blame upon others?
  - Are the parents/caretakers apathetic or insensitive to the child's condition?

Once the investigating officer is inside the home, he or she should isolate the child and, with sensitivity, question the child as to the cause of the injuries. The officer should also examine the child thoroughly for discoverable injuries, such as broken limbs, cuts and bruises. Depending on the age of the child, a visual examination of the child's anatomy should be conducted to ascertain the existence of burns on the buttocks or bottoms of the feet or injuries to other areas hidden by clothes. Very often it is impossible for an officer or a layperson to detect an injury; for example, when the injury is not visible, as in the case of internal hemorrhaging. Head injuries are particularly dangerous and often detectable only by x-ray. Therefore, if an officer has any reason to suspect a head injury, the child should be taken to a medical facility for an examination. Additionally, a complete examination of all children in the family is advisable when child abuse is suspected.

If the preliminary investigation indicates abuse, the officer should take the child to a medical facility that has doctors trained in detecting child abuse injuries. The family doctor, or even the doctor at a local clinic, may be hesitant to diagnose a case as child abuse or may not be cognizant of abuse symptoms. The child should be carefully and sensitively told where he or she is being taken, why this is being done and what to expect.

When responding to a case of reported sexual abuse of a female, officers should not overlook the possibility that male children in the family may also have been molested.

Careful evaluation is necessary in a sexual abuse situation to determine whether the child should be removed from the home immediately. The mother may assure the officer that the offending male will not be allowed to return to the home. However, in view of the emotional and perhaps economic dependence the mother often has on the offending male, she may allow him back into the house. Thus, the child is again in an unprotected environment.

While in the home, the officer should be alert for possible evidence, such as a broom handle or belt, that may be needed in the event criminal prosecution is in order. The statements of all residents of the home should be taken separately and as soon as possible, especially the victim's statement. When appropriate, the officer should ask the victim what object(s) was used to inflict the injuries. This will aid the physician in treating the victim, and the officer may lawfully be able to obtain the object(s) as evidence.

It may be difficult for an officer to corroborate his suspicions during the investigation because parents usually protect each other when asked questions about abuse. Frequently, however, the parents'/caretakers' stories as to how a child received injuries will be inconsistent with the nature of the injuries. The officer should note the parents'/caretakers' versions and relay them to the examining physician. The physician may conclude that the injuries could not have happened in that manner.

The officer should take photographs of the child's injuries and the home conditions. In cases of neglect, investigators should photograph the "presence" of unhealthy conditions (filth or dangerous conditions), as well as the "absence" of healthy conditions (empty refrigerator, no toilet, etc.). Photographs serve as potent incriminating and corroborating evidence, especially where the only "witness" is the victim.

If possible, a drawing should also be made of the body (scars, lacerations, bruises, burns, etc.). In the drawing, the number and extent of injuries should be documented. (See Department of Justice Report Form 900 in Appendix I, for example.)

The immediate and future protection of the child is often dependent on the completeness and accuracy of the initial investigation and report. The investigating officers should not be thinking only of prosecution, but be concerned primarily with the child's protection. Law enforcement officers investigating child abuse cases must have an open-minded, compassionate attitude and must attempt to remain as objective and neutral as possible. It is important that an officer refrain from punitive or accusatory remarks. Although the welfare of the child is the primary concern, it is also important to recognize the rights and dignity of the parents as well. Furthermore, the proper attitude may elicit cooperation.

As in all areas of criminal law, all searches, seizures and arrests made in the course of child abuse investigations must comply with the requirements of the Fourth Amendment. Over the past years, however, California courts have been somewhat more willing to find searches reasonable due to the dangerous nature of the crime of child abuse in all its forms. This attitude has been clearly expressed in case law. Some courts have found that emergency circumstances (dependent upon the seriousness of the crime and the helplessness of the potential victim) require a warrantless entry or, in *extreme* cases, have excused *Miranda* requirements. Therefore, when an officer has reasonable cause to believe a child is in real and immediate danger, he or she should not hesitate to act on behalf of the child. If abuse is suspected, the officer should not hesitate to take the child for medical treatment or examination. For detailed legal information regarding search and seizure and the right of entry in child abuse investigations, the county district attorney should be consulted. Additionally, the Attorney General's Office has produced a summary of case law in this area. (See "The Rules of Search and Seizure," Appendix V.) Guidelines and protocol for investigation of child abuse, sexual exploitation, and sexual abuse have also been published by the Commission on Peace Officer Standards and Training.

LEGAL COMMUNITY

In addition to the adult court which handles the criminal cases of adult offenders, and the juvenile court which makes determinations about dependent children, the "legal community" is basically composed of three additional agencies: the county district attorney, the county counsel and the defense counsel.

The district attorney, or in appropriate cases the city attorney, prosecutes cases of child abuse and neglect in the criminal adult court. The district attorney or county counsel, when appropriate, will appear in the juvenile court on behalf of the agency that filed the petition for the child in the dependency proceeding (see Appendix III, Welf. & Inst. Code, § 300 cases).

Prevention, Intervention and Treatment

The basic need for the prevention of child abuse and neglect is to reduce or eliminate the needless suffering that many children experience daily in California and across the nation. The suffering experienced by the children is also experienced by their families in most instances. Child abuse and neglect in the family is largely an intergenerational problem. Although it is clear that the nature and degree of some types of abuse is reflective of severe mental illness or character disorder, many parents of abused and neglected children were abused themselves and are attempting to the best of their ability to cope with environmental stresses and the demands of parenting.

Overall, a small percentage of the reported instances of child abuse and neglect are the severe cases or the heinous crimes of which the public is made aware by the media. Of all the cases of child abuse and neglect reported to county child welfare (protective) services, approximately half are for general neglect. A small percentage of the children involved in the remaining cases are placed into protective custody. Many children placed into protective custody are later released, often with child welfare services provided in the home. Of those children placed in temporary foster care, many are returned home after family reunification services have been provided. Very few of the reported cases result in the termination of parental rights and/or prosecution.

In addressing the needs of victims of abuse and neglect, it is important to focus on the need for services for families at risk of becoming abusive or neglectful as well as those families reported for abuse and neglect.

Professionals, public policymakers and the general public are beginning to recognize the high cost of the cycle of abuse. Common sense, professional experience and emerging studies are beginning to indicate a connection or correlation between child abuse and crime, mental illness, medical problems,

drug and alcohol abuse, runaways, youth suicides, teenage prostitution, juvenile sex offenders, education and employment problems, and other social problems.

This recognition is in part responsible for the increasing demand for prevention of child abuse as a means of preventing many of the overwhelming social ills our society is currently facing.

There is a developing realization that child abuse prevention is cost effective from a public policy perspective. The estimated cost of social services, criminal justice, health, mental health, and other systems intervention for the untreated or undertreated victims of child abuse is enormous. These costs include such things as medical treatment, therapy, foster care and incarceration. Prevention is being recognized as a long-term approach to reducing the demands on our overburdened intervention and response systems.

Many professionals in California have adopted the following prevention model to define the levels of child abuse and neglect prevention efforts:

- ***"Primary prevention"*** may be defined as community education which enhances the general well-being of children and their families. These educational services are designed to enrich the lives of families, to provide information and skills to improve family functioning, and to prevent the types of stress and problems that might lead to dysfunction and abuse or neglect.

  Primary prevention includes perinatal programs which focus on parent preparation during the prenatal period, practices that encourage parent-child bonding during labor, delivery, the postpartum period and early infancy, and provision of information regarding support services for families with newborns.

  Primary prevention also includes providing parents of children of all ages with information regarding child rearing and community resources.

- ***"Secondary prevention"*** may be defined as those services designed to identify and assist high risk families to prevent abuse or neglect. High risk families are those families exhibiting the symptoms of potentially abusive or neglectful behavior or under the types of stress associated with abuse or neglect.

- ***"Tertiary prevention"*** may be defined as intervention or treatment services to assist a family in which abuse or neglect has already occurred to prevent further abuse or neglect. Intervention can range from "early" intervention in the initial stages of abuse or neglect to "late stage" intervention in severe cases or after services have failed to stop the abusive or neglectful behavior.

Treatment techniques for the entire family are being developed and implemented in California through a number of programs using interdisciplinary techniques. However, many existing treatment programs still concentrate primarily on providing psychological counseling for the abuser with concurrent efforts to bring the family back together. It is a concern of many experts that not enough individual counseling is given to the child.

It is especially important that child victims of incest receive counseling. For a variety of reasons, the incest victim may be feeling an acute lack of self-worth and often may remain burdened with feelings of guilt and helplessness. With effective intervention and counseling, there can be a striking recovery for the child victim.

Studies showing female victims of incest to have a higher potential for suicide or that many prostitutes were victims of sexual abuse as children illustrate the consequences of the failure to provide assistance to these child victims.

While law enforcement is usually involved in the initial response and investigation of child abuse, it should be remembered that it may not always be appropriate to respond to child abuse with the traditional crime-and-punishment approach. Fines or prison sentences alone are unlikely to rehabilitate a child abuser or to solve the family problems. Accomplishment of these goals often requires a modified approach to punishment which provides for the offender's participation in treatment programs.

Treatment can have positive long-term effects for abusive parents. The uniqueness of each abuser requires a flexible approach for the variety of circumstances, factors, or conditions of each case. Treatment can assist parents/caretakers in understanding why they are abusive and how they can gain control of their behavior. For many abusive parents treatment involves a process of "parent reprogramming." They need assistance in learning how to manage their own lives, how to

maintain good discipline, and how to be sensitive to and understand a child's needs. Parents may also need someone who can be there in times of crisis and who can help them with their practical needs by leading them to resources (e.g., the local child care resource and referral network) which can provide more direct help (e.g., respite care).

Parent self-help groups, such as Parents Anonymous or Parents United, and other community-based resource groups, have undertaken programs in child abuse treatment. Long- and short-term approaches are developed to help establish, strengthen and maintain a healthy emotional and physical coexistence between parents and children. In the short-term, it is important to intervene in the immediate situation. However, the key to positive solutions lies in the long-term approach.

Child abuse and neglect prevention and intervention services are provided by many types of services providers under a variety of funding sources. Direct public funding of child abuse prevention and intervention services is provided for in every county, primarily through public child welfare services and state-funded child abuse prevention services. Many other public agencies serve high risk families and child abuse victims from funds provided for their specific function, e.g., public health and mental health agencies. In addition, many private agencies and practitioners (e.g., physicians, psychotherapists, marriage, family and child counselors, and clinical social workers) provide a variety of child abuse-related services to children and their families.

Federal and state laws require all counties to provide public child welfare services, also known as child protective services. The three primary purposes of the laws are: to prevent the need for removal of children from their parents while ensuring the safety of the child; to provide for early reunification of families when children have been removed; and to assure a stable long-term placement for children who cannot be safely returned to their homes. (See "Child Welfare Services" in "Professional Responsibilities.")

In addition to public child welfare services, there is a network of state and locally funded child abuse prevention and intervention services in most communities throughout California, a network of local child care agencies and providers, referral networks, and numerous other community services provided by public and private agencies, private practitioners, and community volunteers that support families, assist families in trouble, and provide services to abusive or neglectful families.

If parents, caretakers, foster parents, child care providers or others feel the need for such assistance in dealing with the children for whom they are responsible, they should contact the following:

- The child abuse hotline, council or center in their area.
- The child welfare services unit of the local welfare or social services department, or the children's services department.
- The county health or mental health department.
- The law enforcement agency for referral information.
- The local child care resource and referral agency for information regarding child day care.
- The local community college, adult education program at a local high school, or recreation and parks program director for parenting classes.
- Parents Anonymous:
  In California—toll free:
  1-800-352-0386.
- Parents United and Daughters and Sons United.
- Adult victim/survivor networks.

Local community child abuse prevention coordinating councils are essential to coordinating agency efforts to respond to child abuse. These councils which now exist in most California counties, are comprised of all involved agencies. They meet regularly to develop information, coordinate action, and procure additional resources. As has been shown throughout this publiction, many agencies have a role in child abuse and neglect. By participating in councils, these agencies are able to improve communications, coordinate actions, and respond more effectively.

The Role of the Community

Community members have an important role in protecting children from abuse and neglect. Individuals must recognize that child abuse is a community or neighborhood problem which can be prevented if we involve ourselves through various types of individual, neighborhood, or community action.

The life of a child may be saved if community members become involved and report cases of suspected child abuse. Fear of involvement has resulted in violent family tragedies in which the neighbors reported that they knew what was going on but declined to get involved.

Involvement does not mean physical intervention or snooping on your neighbor—*it simply means not ignoring* the ovbious. If maltreatment of a child is suspected, a report should be made so that a qualified and experienced person can investigate the situation. The child protective agencies to call to report suspected child abuse include:

- The police or county sheriff's department.
- The county child welfare department (other names for this may be children's services department, department of public social services, etc.).
- The county juvenile probation department.

If a member of the community, who is not required by law to report, feels reluctant to identify himself or herself by name, it should be noted that reports may be made to the above agencies anonymously. (Pen. Code, § 11167, subd. (c).) For purposes of investigation and follow-up, however, it is preferred that the name and address of such a reporter be volunteered. The important thing is the immediate protection of the child. In any event, all names are confidential and can be released only by a court order to designated persons regardless of whether the reporter is one required by law to report.

For example, when the parents of an abused child ask for the name of the individual who reported them, the child protective agency will not release the name of the reporting person. Only a court can order such disclosure and will do so only under certain circumstances. Mandated reporters *must* give their names to a child protective agency when reporting. However, all reporters are protected by the cloak of confidentiality described above. (See Appendix VII.)

In addition to reporting suspected cases to the proper authorities, it is important for individuals in the community to involve themselves in the prevention and treatment of child abuse through various types of community action. Individuals can educate themselves and their organizations on the extent and problems of child abuse. They can involve themselves and their organizations in efforts to increase available resources in their area by providing material support, community education and/or by lobbying for additional and related services.

Individuals can also assist in preventing child abuse by attempting to be sensitive to the needs of apparently isolated or troubled families with whom they are in contact. By offering, wherever and whenever possible, personal support as volunteers, making occasional visits, providing child care to give the parents some time alone, or providing a variety of other supportive measures, child abuse can be prevented at the community level.

Finally, community members may choose to formalize their responsibility and involvement in the prevention and reporting of child abuse. In Redondo Beach, community members involved in Neighborhood Watch—established for the purpose of reducing property crimes—are now expanding their role to detect child abuse and other family violence. The successful premise of Neighborhood Watch—neighbors looking out for neighbors—could save a child's life.

As a result of the complexity of the problem of child abuse and the multiplicity of agencies and individuals involved in its prevention and treatment, child abuse prevention coordinating councils have evolved as a means of coordinating community response. The federal Standards for Child Abuse and Neglect Prevention Programs and Projects urged that community child protection coordinating committees be initiated to "foster cooperative, communitywide child protection efforts." The National Center on Child Abuse and Neglect in the federal Department of Health and Human Services has continually promoted these councils through the distribution of its booklet, *A Community Approach: The Child Protection Coordinating Committee.* California has approximately 70 active child abuse prevention coordinating councils. These local councils are organized in a statewide network through the California Consortium of Child Abuse Councils, a private nonprofit organization.

Local child abuse prevention coordinating councils exist under many names and have a variety of organizational structures, funding sources and functions. There are many organizational forms for child abuse councils. Many are informal organizations; others are formally constituted as either private nonprofit organizations or sponsored by local government or agencies. Most are open to participation by private agencies and the community. Some councils are supported by local government funds. Most, however, either raise their funds independently or operate strictly on a voluntary basis with no fiscal support.

The primary functions of a child abuse prevention coordinating council are as follows:

- To provide a forum for interagency cooperation and coordination in the prevention, detection, treatment and legal processing of child abuse cases.
- To promote public awareness of the abuse and neglect of children and the resources available for intervention and treatment.
- To facilitate training of professionals in the detection, treatment and prevention of child abuse and neglect.
- To develop improved services to families and victims.
- To encourage and facilitate community support for child abuse and neglect programs.

Without individual and community concern and involvement there are really three "victims" of child abuse: the child, the abuser and the community. However, each of us may make a valuable contribution to the protection of children and the prevention of abuse. Our concern and involvement is critical—*it may save a life.*

Appendix I

CHILD ABUSE REPORTING FORMS

The Child Abuse Reporting Law requires the Department of Justice to adopt, print, and distribute child abuse reporting forms to child protective agencies throughout California. (Pen. Code, §§ 11168–11169.) The Department of Justice has developed and distributed two standard reporting forms—SS 8572 and DOJ 900.

SS 8572—The "Suspected Child Abuse Report" form is used by mandated reporters to report a suspected child abuse incident to a child protective agency. These include all child care custodians, medical practitioners, nonmedical practitioners and employees of child protective agencies as defined in Penal Code section 11165.

DOJ 900—The "Medical Report—Suspected Child Abuse" form is required to be submitted by all professional medical personnel in conjunction with form SS 8572. Form DOJ 900 is designed to provide investigating child protective agencies with detailed medical information that will assist in investigating suspected child abuse. A copy of this form is not required by the Department of Justice for the Child Abuse Central Registry.

State law now requires that each physician who conducts a medical examination for evidence of sexual assault complete a medical report form (Form 923) where the patient has consented to be so examined. This medical report form is available from the State Department of Health Services. However, if the victim is a minor, Form DOJ 900 should be used.

Questions regarding the use of Department of Justice Forms SS 8572 or DOJ 900 or requests for additional forms should be directed to:

Department of Justice
Bureau of Criminal Statistics and
Special Services
Post Office Box 903417
Sacramento, CA 94203-4170

SUSPECTED CHILD ABUSE REPORT
(11166 PC)

TO BE COMPLETED BY REPORTING PARTY

CASE IDENTIFICATION — *TO BE COMPLETED BY INVESTIGATING CPA*

VICTIM NAME: _____

REPORT NO./CASE NAME: _____

DATE OF REPORT: _____

A REPORTING PARTY

_____
NAME/TITLE

_____
ADDRESS

( ) _____ _____ _____
PHONE DATE OF REPORT SIGNATURE OF REPORTING PARTY

B REPORT SENT TO

◯ POLICE DEPARTMENT ◯ SHERIFF'S OFFICE ◯ COUNTY WELFARE ◯ COUNTY PROBATION

_____ _____
AGENCY ADDRESS

_____ ( ) _____ _____
OFFICIAL CONTACTED PHONE DATE/TIME

C VICTIM

_____ _____ _____
NAME (LAST, FIRST, MIDDLE) ADDRESS BIRTHDATE SEX RACE

_____ ( )
PRESENT LOCATION OF CHILD PHONE

SIBLINGS

1. _____ 4. _____
2. _____ 5. _____
3. _____ 6. _____
NAME BIRTHDATE SEX RACE NAME BIRTHDATE SEX RACE

D PARENTS

_____ _____ _____ _____
NAME (LAST, FIRST, MIDDLE) BIRTHDATE SEX RACE NAME (LAST, FIRST, MIDDLE) BIRTHDATE SEX RACE

_____ _____
ADDRESS ADDRESS

( ) ( ) ( ) ( )
HOME PHONE BUSINESS PHONE HOME PHONE BUSINESS PHONE

E INCIDENT INFORMATION

IF NECESSARY, ATTACH EXTRA SHEET OR OTHER FORM AND CHECK THIS CIRCLE. ◯

1. _____ _____ *(CHECK ONE)* ◯ OCCURRED ◯ OBSERVED
DATE/TIME OF INCIDENT PLACE OF INCIDENT

IF CHILD WAS IN OUT-OF-HOME CARE AT TIME OF INCIDENT, CHECK TYPE OF CARE:
◯ GROUP HOME OR INSTITUTION ◯ FOSTER CARE ◯ OTHER PLACEMENT (SPECIFY _____)

2. TYPE OF ABUSE: *(CHECK ONE OR MORE)* ◯ PHYSICAL ◯ MENTAL ◯ SEXUAL ASSAULT ◯ NEGLECT ◯ OTHER

3. NARRATIVE DESCRIPTION: _____

4. SUMMARIZE WHAT THE ABUSED CHILD OR PERSON ACCOMPANYING THE CHILD SAID HAPPENED: _____

5. EXPLAIN KNOWN HISTORY OF SIMILAR INCIDENT(S) FOR THIS CHILD: _____

SS 8572 4/81 *INSTRUCTIONS ON REVERSE*

Police or Sheriff — WHITE Copy; DOJ — PINK Copy; County Welfare or Probation — BLUE Copy; District Attorney — GREEN Copy; Reporting Party — YELLOW Copy

THIS FORM, AS ADOPTED BY DEPARTMENT OF JUSTICE, IS REQUIRED UNDER PENAL CODE SECTIONS 11166 AND 11168

REPORTING RESPONSIBILITIES

- No child care custodian, medical practitioner or nonmedical practitioner reporting a suspected instance of child abuse shall be civilly or criminally liable for any report required or authorized by this article (California Penal Code Article 2.5). Any other person reporting a suspected instance of child abuse shall not incur civil or criminal liability as a result of any report authorized by this section unless it can be proved that a false report was made and the person knew or should have known that the report was false.

- Any child care custodian, medical practitioner, nonmedical practitioner, or employee of a child protective agency (CPA) who has knowledge of or observes a child in his or her professional capacity or within the scope of his or her employment whom he or she reasonably suspects has been the victim of child abuse shall report such suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and shall prepare and send a written report thereof *within 36 hours* of receiving the information concerning the incident.

- Any child care custodian, medical practitioner, nonmedical practitioner, or employee of a child protective agency who has knowledge of or who reasonably suspects that mental suffering has been inflicted on a child or its emotional well-being is endangered in any other way, may report such suspected instance of child abuse to a child protective agency. Infliction of willful and unjustifiable mental suffering must be reported.

REPORTING PARTY DEFINITIONS

- "Child care custodian" means a teacher, administrative officer, supervisor of child welfare and attendance, or certificated pupil personnel employee of any public or private school; an administrator of a public or private day camp; a licensed day care worker; an administrator of a community care facility licensed to care for children; headstart teacher; public assistance worker; employee of a child care institution including, but not limited to, foster parents, group home personnel and personnel of residential care facilities; a social worker or a probation officer.

- "Medical practitioner" means a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code.

- "Nonmedical practitioner" means a state or county public health employee who treats a minor for venereal disease or any other condition; a coroner; a paramedic; a marriage, family, or child counselor; or a religious practitioner who diagnoses, examines, or treats children.

- "Child protective agency" means a police or sheriff's department, a county probation department, or a county welfare department.

INSTRUCTIONS

I. CASE IDENTIFICATION (Upper Box) – *To Be Completed by Investigating Child Protective Agency.*

Case Identification: Enter the victim name, report number or case name, and date of report.

II. SUSPECTED CHILD ABUSE REPORT (11166 PC) – *To Be Completed by Reporting Party.*

A. Reporting Party: Enter name/title, address, phone number, and the date of report, and sign.

B. Report Sent To: 1) Check the appropriate child protective agency to whom this report is being sent; 2) Enter the name and address of the child protective agency to whom this report is being sent; 3) Enter the name of the official contacted at the child protective agency, phone number, and the date/time contacted.

C. Victim: Enter the name, address, physical data, present location, and phone number where victim is located (attach additional sheets if multiple victims).

Siblings: Enter the name and physical data of siblings living in the same household as the victim.

D. Parents: Enter the names, physical data, addresses, and phone numbers of father/stepfather and mother/stepmother.

E. Incident Information: 1) Enter the date, time, and place the incident occurred or was observed, and check the appropriate circles; 2) Check the type of abuse; 3) Describe injury or sexual assault (where appropriate, attach form DOJ 900, Medical Report – Suspected Child Abuse or any other form desired); 4) Summarize what the child or person accompanying the child said happened; 5) Explain any known prior incidents involving the victim.

III. DISTRIBUTION

A. Reporting Party: Complete form SS 8572, Suspected Child Abuse Report (11166 PC). Retain yellow copy for your records and submit top four copies to a child protective agency.

B. Investigating Child Protective Agency: Upon receipt of form SS 8572, Suspected Child Abuse Report (11166 PC), send white copy to police or sheriff, blue copy to county welfare or probation, and green copy to district attorney *within 36 hours*. Complete form SS 8573, Suspected Child Abuse Preliminary Investigation Report (11169 PC), attach pink copy to pink copy of SS 8572, and forward to DOJ *immediately*.

DOJ 900

MEDICAL REPORT—SUSPECTED CHILD ABUSE

HOSPITAL

INSTRUCTIONS: ALL PROFESSIONAL MEDICAL PERSONNEL ARE REQUIRED BY SECTION 11166 OF THE PENAL CODE TO COMPLETE THIS FORM IN CONJUNCTION WITH THE SS 8572 SUSPECTED CHILD ABUSE REPORT WHERE CHILD ABUSE, AS DEFINED BY SECTION 11165 OF THE PENAL CODE, IS SUSPECTED. THE REPORTS, DOJ 900 AND SS 8572, MUST BE SUBMITTED TO A POLICE OR SHERIFF'S DEPARTMENT, OR A COUNTY PROBATION OR WELFARE DEPARTMENT WITHIN 36 HOURS. PROFESSIONAL MEDICAL PERSONNEL MEANS ANY PHYSICIAN AND SURGEON, PSYCHIATRIST, PSYCHOLOGIST, DENTIST, RESIDENT, INTERN, PODIATRIST, CHIROPRACTOR, LICENSED NURSE, DENTAL HYGIENIST OR ANY OTHER PERSON WHO IS CURRENTLY LICENSED UNDER DIVISION 2 (COMMENCING WITH SECTION 500) OF THE BUSINESS AND PROFESSIONS CODE. EACH PART OF THE FORM MUST BE COMPLETED UNLESS INAPPLICABLE. IN FILLING OUT THIS FORM, NO CIVIL LIABILITY ATTACHES AND NO CONFIDENTIALITY IS BREACHED.

I. GENERAL INFORMATION Print or type

PATIENT'S NAME | HOSPITAL ID NO.

ADDRESS | CITY | COUNTY | STATE | PHONE

AGE | BIRTHDATE | RACE | SEX | DATE AND TIME OF ARRIVAL | MODE OF TRANSPORTATION | DATE AND TIME OF DISCHARGE

ACCOMPANIED TO HOSPITAL BY: NAME | ADDRESS | CITY | STATE | RELATIONSHIP

PHONE REPORT MADE TO | ID NO. | DEPARTMENT | PHONE | RESPONDING OFFICER/AGENCY

NAME OF: ☐ FATHER ☐ STEPFATHER | ADDRESS | CITY | COUNTY | HOME PHONE | BUS. PHONE | AGE/DOB

NAME OF: ☐ MOTHER ☐ STEPMOTHER | ADDRESS | CITY | COUNTY | HOME PHONE | BUS. PHONE | AGE/DOB

SIBLINGS: LAST NAME, FIRST | DOB | LAST NAME, FIRST | DOB | LAST NAME, FIRST | DOB

II. MEDICAL EXAMINATION

A. History

1. EXPLANATION OF INJURIES BY PARENT OR PERSON ACCOMPANYING CHILD (LOCATION, DATE, TIME AND CIRCUMSTANCES)

2. PATIENT'S STATEMENT EXPLAINING INJURY (PARAPHRASE)

3. PATIENT'S EMOTIONAL REACTION TO EXAMINATION (SUBMISSIVE, COMPLIANT, ETC.)

4. PREVIOUS HISTORY OF CHILD ABUSE (IF KNOWN)

B. Sexual Assault Perform exam only if necessary.

1. ACTS COMMITTED: NOTE—COITUS, FELLATIO, CUNNILINGUS, SODOMY

2. DURING ASSAULT:
☐ VAGINAL PENETRATION (HOW) | EJACULATION: ☐ VAGINAL ☐ ORAL ☐ ANAL ☐ OTHER:
☐ ANAL PENETRATION (HOW) | ☐ CONDOM USED ☐ VOMITED ☐ LOSS OF CONSCIOUSNESS ☐ OTHER:

3. AFTER ASSAULT:
☐ WIPED/WASHED ☐ BATHED ☐ DOUCHED ☐ VOMITED ☐ CHANGED CLOTHES ☐ BRUSHED TEETH ☐ DEFECATED ☐ OTHER:

C. Physical Examination

DATE AND TIME OF EXAM | DATE AND TIME OF ASSAULT | BP | PULSE | RESP. | TEMP

HEIGHT | WEIGHT | HEAD CIRCUM. | LAST TETANUS | KNOWN ALLERGIES | CURRENT MEDICATION

DIAGNOSTIC DATA

Check if indicated and incorporate results in written examination at left

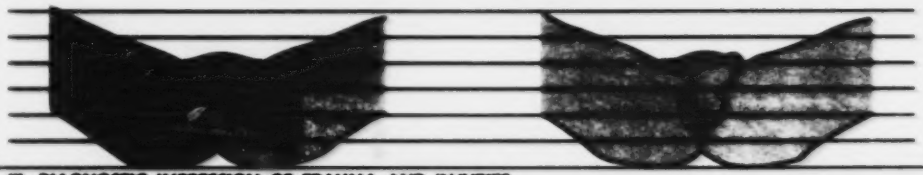
- ☐ X-rays (skull, chest, longbone, full skeletal)
- ☐ Bleeding, coagulation, tourniquet, tests
- ☐ Funduscopic
- ☐ Other

DOJ 900

DATE	HOSPITAL ID NO.	HOSPITAL

PHYSICAL EXAMINATION (CONTINUED) LOCATE AND DESCRIBE IN DETAIL ANY INJURIES OR FINDINGS: TRAUMA, BRUISES, ERYTHEMA, EXCORIATIONS, LACERATIONS, WOUNDS. TRACE OUTLINE USED AND INDICATE LOCATION OF WOUNDS/LACERATIONS USING 'X' FOR SUPERFICIAL, 'O' FOR DEEP; SHADE FOR BRUISES OR BURNS. BESIDE EACH INJURY INDICATED NOTE COLOR, SIZE, PATTERN, TEXTURE, AND SENSATION. WRITE OVER UNUSED OUTLINES. DESCRIBE IN DETAIL SHAPE OF ARM OR OTHER BRUISES WHICH MAY INDICATE FORCE.

B. PELVIC A PELVIC EXAMINATION SHOULD NOT BE PERFORMED UNLESS THE PARENT, GUARDIAN OR MINOR CONSENT OR UNLESS NECESSARY AS PART OF TREATMENT. SEE DEPARTMENT OF HEALTH REGULATIONS TITLE 22, DIVISION 2, VICTIMS OF SEXUAL ASSAULT. SAME INSTRUCTIONS AS GENERAL PHYSICAL; IN ADDITION, NOTE PUBIC HAIR COMBINGS WHERE INDICATED, DRIED SECRETIONS AND RECENT INJURIES TO HYMEN, TRACE AND OUTLINE AS ABOVE.



III. DIAGNOSTIC IMPRESSION OF TRAUMA AND INJURIES

IV. TREATMENT/DISPOSITION OF PATIENT

A. ☐ GC CULTURE ☐ VDRL ☐ PREGNANCY TEST ☐ POST COITAL ESTROGEN ☐ VD PROPHYLAXIS ☐ OTHER:

☐ MOTILE SPERM: ☐ PRESENCE ☐ ABSENCE ☐ NOT TAKEN ☐ FAMILY ASSESSMENT BY: ☐ NOT ORDERED

B. ORDERS:

C. DISPOSITION: ☐ ADMIT TRANSFERRED TO:

ACCOMPANIED BY: NAME ADDRESS RELATIONSHIP

☐ RELEASED

I HAVE RECEIVED THE INDICATED ITEMS AS EVIDENCE AND A COPY OF THIS REPORT.

OFFICER: ID NO.: DATE:

NURSE | SIGNATURE OF EXAMINATION PHYSICIAN

V. SPECIMENS

STAINS/FOREIGN MATERIALS (WHEN INDICATED)

LOOSE HAIR	___	FINGERNAIL SCRAPINGS	___
BLOOD	___	DIRT OR GRAVEL	___
THREADS	___	VEGETATION	___
GRASS	___	CLOTHING	___
DRIED SECRETIONS	___		

	SLIDES	SWABS
VAGINAL	___	___
RECTAL	___	___
ORAL	___	___
ASPIRATES/ WASHINGS	___	___
BITE MARKS	___	___
OTHER:	___	___

PATIENT'S SAMPLES: TIME OF COLLECTION AT MD DISCRETION

BLOOD	___
HAIR FROM HEAD	___
SALIVA	___
HAIR FROM PUBIC AREA	___

D. FOLLOW-UP WITHIN:

☐ MEDICAL ___ HRS ___ DAYS

☐ SOCIAL SERVICES ___ HRS ___ DAYS

☐ PRIVATE MD ___ HRS ___ DAYS

☐ OTHER ___ HRS ___ DAYS

41

BEST COPY AVAILABLE

CALIFORNIA CHILD ABUSE REPORTING LAW

Penal Code, Article 2.5. Child Abuse Reporting

Section 11165. Definitions

As used in this article:

(a) ***"Child"*** means a person under the age of 18 years.

(b) ***"Sexual abuse"*** means sexual assault or sexual exploitation as defined by the following:

(1) ***"Sexual assault"*** means conduct in violation of one or more of the following sections of this code: Section 261 (rape), 264.1 (rape in concert), 285 (incest), 286 (sodomy), subdivision (a) or (b) of Section 288 (lewd or lascivious acts upon a child under 14 years of age), 288a (oral copulation), 289 (penetration of a genital or anal opening by a foreign object), or 647a (child molestation).

(2) ***"Sexual exploitation"*** refers to any of the following:

(A) Conduct involving matter depicting a minor engaged in obscene acts in violation of Section 311.2 (preparing, selling, or distributing obscene matter) or subdivision (a) of Section 311.4 (employment of minor to perform obscene acts).

(B) Any person who knowingly promotes, aids, or assists, employs, uses, persuades, induces, or coerces a child, or any parent or guardian of a child under his or her control who knowingly permits or encourages a child to engage in, or assist others to engage in, prostitution or to either pose or model alone or with others for purposes of preparing a film, photograph, negative, slide, or live performance, involving obscene sexual conduct for commercial purposes.

(C) Any person who depicts a child in, or who knowingly develops, duplicates, prints, or exchanges, any film, photograph, videotape, negative, or slide in which a child is engaged in an act of obscene sexual conduct, except for those activities by law enforcement and prosecution agencies and other persons described in subdivisions (c) and (e) of Section 311.3.

(c) ***"Neglect"*** means the negligent treatment or maltreatment of a child by a person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare. The term includes both acts and omissions on the part of the responsible person.

(1) ***"Severe neglect"*** means the negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed nonorganic failure to thrive. "Severe neglect" also means those situations of neglect where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered, as proscribed by subdivision (d), including the intentional failure to provide adequate food, clothing, shelter, or medical care.

(2) ***"General neglect"*** means the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, medical care, or supervision where no physical injury to the child has occurred.

For the purposes of this chapter, a child receiving treatment by spiritual means as provided in Section 16509.1 of the Welfare and Institutions Code or not receiving specified medical treatment for religious reasons, shall not for that reason alone be considered a neglected child. An informed and appropriate medical decision made by parent or guardian after consultation with a physician or physicians who have examined the minor shall not constitute neglect.

(d) ***"Willful cruelty or unjustifiable punishment of a child"*** means a situation where any person willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered.

(e) ***"Corporal punishment or injury"*** means a situation where any person willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition.

(f) ***"Abuse in out-of-home care"*** means a situation of physical injury on a child which is inflicted by other than accidental means, or of sexual abuse or neglect or the willful cruelty or unjustifiable punishment of a child, as defined in this article, where the person responsible for the child's welfare is a foster parent or the administrator or an employee of a public or private residential home, school, or other institution or agency.

(g) ***"Child abuse"*** means a physical injury which is inflicted by other than accidental means on a child by another person. "Child abuse" also means the sexual abuse of a child or any act or omission proscribed by Section 273a (willful cruelty or unjustifiable punishment of a child) or 273d (corporal punishment or injury). "Child abuse" also means the neglect of a child or abuse in out-of-home care, as defined in this article.

(h) ***"Child care custodian"*** means a teacher, administrative officer, supervisor of child welfare and attendance, or certificated pupil personnel employee of any public or private school; an administrator of a public or private day camp; a licensee, an administrator, or an employee of a community care facility licensed to care for children; headstart teacher; a licensing worker or licensing evaluator; public assistance worker; employee of a child care institution including, but not limited to, foster parents, group home personnel and personnel of residential care facilities; a social worker or a probation officer.

(i) ***"Medical practitioner"*** means a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, any emergency medical technician I or II, paramedic, or other person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code, or a psychological assistant registered pursuant to Section 2913 of the Business and Professions Code.

(j) ***"Nonmedical practitioner"*** means a state or county public health employee who treats a minor for venereal disease or any other condition; a coroner; a marriage, family, or child counselor; or a religious practitioner who diagnoses, examines, or treats children.

(k) ***"Child protective agency"*** means a police or sheriff's department, a county probation department, or a county welfare department.

(*l*) ***"Commercial film and photographic print processor"*** means any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term includes any employee of such a person; it does not include a person who develops film or makes prints for a public agency.

Section 11166. Report; duty; time

(a) Except as provided in subdivision (b), any child care custodian, medical practitioner, nonmedical practitioner, or employee of a child protective agency who has knowledge of or observes a child in his or her professional capacity or within the scope of his or her employment whom he or she knows or reasonably suspects has been the victim of child abuse shall report the known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident. For the purposes of this article, "reasonable suspicion" means that it is objectively reasonable for a person to entertain such a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect child abuse.

(b) Any child care custodian, medical practitioner, nonmedical practitioner, or employee of a child protective agency who has knowledge of or who reasonably suspects that mental suffering has been inflicted on a child or his or her emotional well-being is endangered in any other way, may report such known or suspected instance of child abuse to a child protective agency.

(c) Any commercial film and photographic print processor who has knowledge of or observes, within the scope of his or her professional capacity or employment, any film, photograph, video tape, negative or slide depicting a child under the age of 14 years engaged in an act of sexual conduct, shall report such instance of suspected child abuse to the law enforcement agency having jurisdiction over the case immediately or as soon as practically possible by telephone and shall prepare and send a written report of it with a copy of the film, photograph, video tape, negative or slide attached within 36 hours of receiving the information concerning the incident. As used in this subdivision, "sexual conduct" means any of the following:

(1) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between humans and animals.

(2) Penetration of the vagina or rectum by any object.

(3) Masturbation, for the purpose of sexual stimulation of the viewer.

(4) Sadomasochistic abuse for the purpose of sexual stimulation of the viewer.

(5) Exhibition of the genitals, pubic or rectal areas of any person for the purpose of sexual stimulation of the viewer.

(d) Any other person who has knowledge of or observes a child whom he or she knows or reasonably suspects has been a victim of child abuse may report the known or suspected instance of child abuse to a child protective agency.

(e) When two or more persons who are required to report are present and jointly have knowledge of a known or suspected instance of child abuse, and when there is agreement among them, the telephone report may be made by a member of the team selected by mutual agreement and a single report may be made and signed by such selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so, shall thereafter make the report.

(f) The reporting duties under this section are individual, and no supervisor or administrator may impede or inhibit the reporting duties and no person making such a report shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established provided that they are not inconsistent with the provisions of this article.

(g) A county probation or welfare department shall immediately or as soon as practically possible report by telephone to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse as defined in Section 11165, except acts or omissions coming within the provisions of paragraph (2) of subdivision (c) of Section 11165, which shall only be reported to the county welfare department. A county probation or welfare department shall also send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

A law enforcement agency shall immediately or as soon as practically possible report by telephone to the county welfare department, the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse reported to it, except acts or omissions coming within the provisions of paragraph (2) of subdivision (c) of Section 11165, which shall only be reported to the county welfare department. A law enforcement agency shall also send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

Section 11166.5. Employment as child care custodian, medical or nonmedical practitioner or with child protective agency; knowledge of and compliance with § 11166; signed statement; contents

Any person who enters into employment on and after January 1, 1985, as a child care custodian, medical practitioner, or nonmedical practitioner, or with a child protective agency, prior to commencing his or her employment, and as a prerequisite to that employment, shall sign a statement on a form provided to him or her by his or her employer to the effect that he or she has knowledge of the provisions of section 11166 and will comply with its provisions.

The statement shall include the following provisions:

Section 11166 of the Penal Code requires any child care custodian, medical practitioner, nonmedical practitioner, or employee of a child protective agency who has knowledge of or observes a child in his or her professional capacity or within the scope of his or her employment whom he or she knows or reasonably suspects has been the victim of a child abuse to report the known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and to prepare and send a written report thereof within 36 hours of receiving the information concerning the incident.

"Child care custodian" includes teachers, administrative officers, supervisors of child welfare and attendance, or certificated pupil personnel employees of any public or private school; administrators of a public or private day camp; licensed day care workers; administrators of

community care facilities licensed to care for children; headstart teachers; licensing workers or licensing evaluators; public assistance workers; employees of a child care institution including, but not limited to, foster parents, group home personnel, and personnel of residential care facilities; and social workers or probation officers.

"Medical practitioner" includes physicians and surgeons, psychiatrists, psychologists, dentists, residents, interns, podiatrists, chiropractors, licensed nurses, dental hygienists, or any other person who is licensed under Division 2 (commencing with section 500) of the Business and Professions Code.

"Nonmedical practitioner" includes state or county public health employees who treat minors for venereal disease or any other condition; coroners; paramedics; marriage, family or child counselors; and religious practitioners who diagnose, examine, or treat children.

The signed statements shall be retained by the employer. The cost of printing, distribution, and filing of these statements shall be borne by the employer.

Section 11167. Report; contents

(a) A telephone report of a known or suspected instance of child abuse shall include the name of the person making the report, the name of the child, the present location of the child, the nature and extent of the injury, and any other information, including information that led that person to suspect child abuse, requested by the child protective agency.

(b) Information relevant to the incident of child abuse may also be given to an investigator from a child protective agency who is investigating the known or suspected case of child abuse.

(c) The identity of all persons who report under this article shall be confidential and disclosed only between child protective agencies, or to counsel representing a child protective agency, or to the district attorney in a criminal prosecution or in an action initiated under section 602 of the Welfare and Institutions Code arising from alleged child abuse, or to counsel appointed pursuant to Section 318 of the Welfare and Institutions Code, or to the county counsel or district attorney in an action initiated under section 232 of the Civil Code or Section 300 of the Welfare and Institutions Code, or when those persons waive confidentiality, or by court order.

(d) Persons who may report pursuant to subdivision (d) of section 11166 are not required to include their names.

Section 11167.5. Confidentiality of reports; violations; disclosure

(a) The reports required by section 11166 shall be confidential and may be disclosed only as provided in subdivision (b). Any violation of the confidentiality provided by this article shall be a misdemeanor punishable by up to six months in jail or by a fine of five hundred dollars ($500) or by both.

(b) Reports of suspected child abuse and information contained therein may be disclosed only to the following:

(1) Persons or agencies to whom disclosure of the identity of the reporting party is permitted under section 11167.

(2) Persons or agencies to whom disclosure of information is permitted under subdivision (b) of section 11170.

(3) Persons or agencies with whom investigations of child abuse are coordinated under the regulations promulgated under section 11174.

(4) Multidisciplinary personnel teams as defined in subdivision (d) of section 18951 of the Welfare and Institutions Code.

(c) Nothing in this section shall be interpreted to require the Department of Justice to disclose information contained in records maintained under section 11169 or under the regulations promulgated pursuant to section 11174, except as otherwise provided in this article.

(d) This section shall not be interpreted to allow disclosure of any reports or records relevant to the reports of child abuse if the disclosure would be prohibited by any other provisions of state or federal law applicable to the reports or records relevant to the reports of child abuse.

Section 11168. Written reports; forms

The written reports required by Section 11166 shall be submitted on forms adopted by the Department of Justice after consultation with representatives of the various professional medical associations and hospital associations and county probation or welfare departments. Such forms shall be distributed by the child protective agencies.

Section 11169. Preliminary reports to Department of Justice; unfounded reports

A child protective agency shall forward to the Department of Justice a preliminary report in writing of every case of known or suspected child abuse which it investigates, other than cases coming within the provisions of paragraph (2) of subdivision (c) of Section 11165, whether or not any formal action is taken in the case. However, if after investigation the case proves to be unfounded no report shall be retained by the Department of Justice. If a report has previously been filed which has proved unfounded, the Department of Justice shall be notified of that fact. The report shall be in a form approved by the Department of Justice. A child protective agency receiving a written report from another child protective agency shall not send such report to the Department of Justice.

Section 11170. Notice to child protective agency of information maintained; indexed reports

(a) The Department of Justice shall maintain an index of all preliminary reports of child abuse submitted pursuant to Section 11169. The index shall be continually updated by the department and shall not contain any reports that are determined to be unfounded. The department may adopt rules governing recordkeeping and reporting pursuant to this article.

(b) The Department of Justice shall immediately notify a child protective agency which submits a report pursuant to Section 11169, or a district attorney who requests notification, of any information maintained pursuant to subdivision (a) which is relevant to the known or suspected instance of child abuse reported by the agency. A child protective agency shall make that information available to the reporting medical practitioner, child custodian, guardian ad litem appointed under Section 326, or counsel appointed under Section 318 of the Welfare and Institutions Code, if he or she is treating or investigating a case of known or suspected child abuse.

When a report is made pursuant to subdivision (a) of Section 11166, the investigating agency shall, upon completion of the investigation or after there has been a final disposition in the matter, inform the person required to report of the results of the investigation and of any action the agency is taking with regard to the child or family.

Section 11171. X-rays of child; exemption from privilege

(a) A physician and surgeon or dentist or their agents and by their direction may take skeletal X-rays of the child without the consent of the child's parent or guardian, but only for purposes of diagnosing the case as one of possibile child abuse and determining the extent of such child abuse.

(b) Neither the physician-patient privilege nor the psychotherapist-patient privilege applies to information reported pursuant to this article in any court proceeding or administrative hearing.

Section 11172. Immunity from liability; attorney fees; failure to report; offense

(a) No child care custodian, medical practitioner, nonmedical practitioner, or employee of a child protective agency who reports a known or suspected instance of child abuse shall be civilly or criminally liable for any report required or authorized by this article. Any other person reporting a known or suspected instance of child abuse shall not incur civil or criminal liability as a result of any report authorized by this article unless it can be proven that a false report was made and the person knew that the report was false. No person required to make a report pursuant to this article, nor any person taking photographs at his or her direction, shall incur any civil or criminal liability for taking photographs of a suspected victim of child abuse, or causing photographs to be taken of a suspected victim of child abuse, without parental consent, or for disseminating the photographs with the reports required by this article. However, the provisions of this section shall not be construed to grant immunity from such liability with respect to any other use of the photographs.

(b) Any child care custodian, medical practitioner, nonmedical practitioner, or employee of a child protective agency who, pursuant to a request from a child protective agency, provides the requesting agency with access to the victim of a known or suspected instance of child abuse shall not incur civil or criminal liability as a result of providing that access.

(c) The Legislature finds that even though it has provided immunity from liability to persons required to report child abuse, that immunity does not eliminate the possibility that actions may be

brought against those persons based upon required reports of child abuse. In order to further limit the financial hardship that those persons may incur as a result of fulfilling their legal responsibilities, it is necessary that they not be unfairly burdened by legal fees incurred in defending those actions. Therefore, a child care custodian, medical practitioner, nonmedical practitioner, or an employee of a child protective agency may present a claim to the State Board of Control for reasonable attorneys' fees incurred in any action against that person on the basis of making a report required or authorized by this article if the court has dismissed the action upon a demurrer or motion for summary judgment made by that person, or if he or she prevails in the action. The State Board of Control shall allow that claim if the requirements of this subdivision are met, and the claim shall be paid from an appropriation to be made for that purpose. Attorneys' fees awarded pursuant to this section shall not exceed an hourly rate greater than the rate charged by the Attorney General of the State of California at the time the award is made and shall not exceed an hourly rate greater than the rate charged by the Attorney General of the State of California at the time the award is made* and shall not exceed an aggregate amount of fifty thousand dollars ($50,000).

This subdivision shall not apply if a public entity has provided for the defense of the action pursuant to Section 995 of the Government Code.

(d) Any person who fails to report an instance of child abuse which he or she knows to exist or reasonably should know to exist, as required by this article, is guilty of a misdemeanor and is punishable by confinement in the county jail for a term not to exceed six months or by a fine of not more than one thousand dollars ($1,000) or by both.

Section 11174. Guidelines

The Department of Justice, in cooperation with the State Department of Social Services, shall prescribe by regulation guidelines for the investigation of child abuse, as defined in subdivision (f) of Section 11165, in group homes or institutions and shall ensure that the investigation is conducted in accordance with the regulations and guidelines.

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* So in chaptered copy.

DEPENDENCY PROCEEDINGS

The laws pertaining to the taking of a minor into custody of the juvenile court or the temporary custody of a peace officer, probation officer, or social worker are found in Welfare and Institutions Code section 300 et seq.

Welfare and Institutions Code section 300 describes those minors who may come within the jurisdiction of the juvenile court. Subdivision (a) includes those minors in need of proper and effective parental care or control who have no parent or guardian or whose parent or guardian is not willing to exercise or is not capable of exercising such care or control. Subdivision (b) includes a minor who is destitute or who is not provided with the necessities of life, or who is not provided with a home or suitable place of abode. Subdivision (c) includes a minor who is physically dangerous to the public because of a mental or physical deficiency, disorder or abnormality. Subdivision (d) includes those minors whose homes are unfit by reason of neglect, cruelty, depravity or physical abuse of either of their parents or of the guardian or other person in whose custody or care the minors are. Subdivision (e) includes a minor who has been freed for adoption from one or both parents for 12 months by either relinquishment or termination of parental rights and for whom an interlocutory decree has not been granted pursuant to section 224n of the Civil Code or an adoption petition has not been granted.

Under the provisions above, a peace officer or probation officer may, in order to protect a child under 18 from further abuse or neglect, take a child into temporary protective custody without a warrant; they do not exempt the officer from the requirements of the Fourth Amendment. (Welf. & Inst. Code, § 305.) In 1984, the Legislature amended Welfare and Institutions Code section 306 to authorize social workers employed by county welfare departments to:

> *"Take into temporary custody and maintain temporary custody of a minor, without warrant, when the social worker has reasonable cause to believe that the minor is a person who is described in subdivision (a) or (b) of Section 300."* (Welf. & Inst. Code, § 306, subd. (c).)

The officer may transport the child to either a hospital, temporary shelter care or emergency foster care, or to an approved community service program for abused and neglected children (Welf. & Inst. Code, § 307.5), *with or without parental consent*, if abuse is suspected. When a minor is taken into temporary custody, the officer must take immediate steps to notify the minor's parents, guardians or responsible relatives and inform them where the minor is unless it can be shown to the court that such notification would endanger the child or that the parents are likely to flee with the child. (Welf. & Inst. Code, § 308, subd. (a).)

Immediately after taking a minor to a place of confinement and except where physically impossible, no later than one hour after the minor has been taken into custody, the minor has the right to make at least two telephone calls from the place where he or she is being held, one call completed to his or her parent or guardian, a responsible relative, or employer, and another call completed to an attorney. It is a misdemeanor for any public officer or employee to deprive a minor of the right to make these telephone calls. (Welf. & Inst. Code, § 308, subd. (b).)

A minor being held in temporary custody by a peace officer, social worker, or probation officer must be released within 48 hours after being taken into custody, excluding nonjudicial days, unless within that time a petition to declare the minor a dependent child has been filed. (Welf. & Inst. Code, § 313, subd. (a).)

The law also requires that the court shall appoint an attorney or the district attorney to represent the child. Counsel appointed by the court shall represent the minor at the detention hearing and subsequent proceedings. It also specifies that: (a) any counsel entering an appearance on behalf of a minor shall continue to represent that minor unless relieved by the court upon substitution of other counsel or for cause; (b) the duties and rights of the child's counsel, including the right and duty to file a civil action pursuant to Penal Code Section 11171; subdivision (b) against a person who has failed to make a mandated report, (c) the counsel's right of access to all records relevant to the case which are maintained by state or local public agencies, hospitals or by medical or nonmedical practitioners or by child care custodians, and relevant information in the Department of Justice Child Abuse Central Registry of child abuse reports. (Welf. & Inst. Code, § 318.)

A minor taken into custody must be brought before a judge or referee of the juvenile court for a detention hearing before the expiration of the next judicial day after the filing of the dependency petition to determine whether the minor should be further detained pending the jurisdiction hearing. If the minor is not brought before the judge within this period, he or she must be released. (Welf. & Inst. Code, § 315.)

The petition is usually filed by the county child welfare department or, in some counties, the probation department still performs this function. A copy of the petition is sent to the parents, guardian or other person having care or custody of the child. A dependency petition may also be filed without first taking the child into protective custody.

In all cases in which a criminal prosecution arising from neglect or abuse of the minor is initiated, the probation officer or a social worker who files the petition shall be the guardian ad litem to represent the interests of the minor in dependency proceedings, unless the court appoints another adult. The guardian ad litem shall not be the attorney responsible for presenting evidence alleging child abuse or neglect in judicial proceedings. (Welf. & Inst. Code, § 326.)

A jurisdiction hearing in the juvenile court must then be held within 15 judicial days of the detention hearing or 30 days of filing the petition if the child is not in custody. A judge decides at that point if the child comes within the description of a dependent child of the court as set forth in Welfare and Institutions Code section 300. If the court finds that the minor is such a person, a disposition hearing is scheduled, usually within 15 days of the jurisdiction hearing. The court may then make ". . . any and all reasonable orders for the care, supervision, custody, maintenance and support of such minor including medical treatment, and may direct participation in counseling or parent education program including but not limited to parent education and parenting subject to further order of the court." (Welf. & Inst. Code, § 362.)

If a child is declared to be a dependent of the juvenile court, the court may order the child to remain at home under the supervision of the child welfare services department (or probation department, depending on the county), or the court may take custody from the parents and order the child to be placed in "out-of-home" care.

Removal of the child requires a finding of any of the following:

- There is substantial danger to the physical health of the minor and there are no reasonable means to protect the child in the home.
- The parent or guardian is unwilling to have physical custody of the child.
- The minor is suffering severe emotional damage and there are no reasonable means to protect the child's emotional health.
- The minor has been sexually abused and there are no reasonable means to protect the child from further sexual abuse.
- The minor is under the age of three, and the court makes a finding of severe physical abuse.

The court must state the facts on which the decision to remove was based. The standard of proof for removal is "clear and convincing evidence." The court must also inform the parents that their parental rights may be terminated permanently if they do not resume custody within 12 months, or immediately if the court finds that return of a child under three, who has been found to be severely physically abused, would be detrimental to the minor.

In a case where a minor is removed from the parents, the court will order the social worker or probation officer to provide child welfare services to the family for the purpose of facilitating reunification for a maximum of 12 months. Services may be extended up to an additional six months if it can be shown that the objectives of the service plan can be achieved within the extended period.

Children found to be dependents of the court, who are not reunited with their parents, are usually placed with relatives, in foster homes, group homes or in other child residential treatment facilities.

The status of every dependent child in foster care must be reviewed periodically, but no less frequently than once every six months as calculated from the date of the original dispositional hearing, until the permanency planning hearing is completed. (Welf. & Inst. Code, § 366, subd. (a).)

The court determines the continuing necessity for and appropriateness of the placement, the extent of compliance with the case plan, the extent of

progress toward alleviating the causes necessitating placement and a likely date for return home. (Welf. & Inst. Code, § 366, subd. (c).)

A permanency planning hearing is conducted no later than 12 months after the original placement. If the court has made a finding that it would be detrimental to return a severely physically abused child under three to his or her home, the permanency planning hearing will be held not later than six months after the original placement. (Welf. & Inst. Code, § 366.25.)

At the permanency planning hearing, with the exception noted above, the court determines whether the minor should be returned to his or her parent. If not, the court determines whether there is a substantial probability that the minor will be returned within six months. If so, the court sets another permanency planning hearing for not more than six months.

If the court determines at the initial or extended permanency planning hearing that the child cannot be returned to the physical custody of his or her parent or guardian, the court is required to develop a permanent plan for the child. The court must consider placement in the following order:

- Adoption
- Legal guardianship
- Long-term foster care

Appendix IV

CHILD ABUSE CRIMES

Child abusers may be arrested, prosecuted, fined, imprisoned or instructed to take part in treatment programs. The following are summaries of California Penal Code sections pertaining to crimes against children:

Penal Code section 11165. Partially summarized

- is part of Article 2.5—the Child Abuse Reporting Law. Section 11165 provides that a child is any person under 18 years of age, and "child abuse" is evidenced by:

1. physical injury which is inflicted by other than accidential means on a child by another person;
2. sexual abuse of a child;
3. willful cruelty or unjustifiable punishment (any act or omission proscribed by Pen. Code, § 273a);
4. cruel or inhuman corporal punishment or injury (Pen. Code, § 273d);
5. neglect of a child;
6. abuse in out-of-home care.

NEGLECT

Penal Code section 11165, subdivision (c). Neglect—summarized

"Neglect" means the negligent treatment or the maltreatment of a child by a caretaker under circumstances indicating harm or threatened harm to the child's health or welfare. The term includes both acts and omissions on the part of the responsible person.

"Severe neglect" means the negligent failure of a parent or caretaker to protect the child from severe malnutrition or medically diagnosed nonorganic failure to thrive. It also includes those situations of neglect where the parent or caretaker willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered. This includes the intentional failure to provide adequate food, clothing, shelter, or medical care.

"General neglect" means the negligent failure of a parent or caretaker to provide adequate food, clothing, shelter, medical care or supervision where no physical injury to the child has occurred.

Penal Code section 270. Failure to provide—summarized

If a parent of a minor child willfully omits, without lawful excuse, to furnish necessary clothing, food, shelter or medical attendance, or other remedial care for his or her child, he or she is guilty of a *misdemeanor punishable by a fine not exceeding $2,000, or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment.*

If a parent has notice of a final adjudication in either a civil or criminal action and then willfully omits without lawful excuse to furnish necessary clothing, food, shelter, medical attendance or other remedial care for his or her child, this conduct is punishable by *imprisonment in the county jail, not exceeding one year or in a state prison for a determinate term of one year and one day, or by a fine not exceeding $2,000 or by both fine and imprisonment.* A parent who does not have legal custody of a child is not relieved from such criminal liability.

PHYSICAL ABUSE/EMOTIONAL MALTREATMENT

Penal Code section 273a. Willful cruelty—summarized

1. Any person, who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health is endangered, *is punishable by imprisonment in the county jail not exceeding one year, or in state prison for two, four or six years.*
2. Any person, who under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health may be endangered, *is guilty of a misdemeanor.*

Penal Code section 273d. Corporal punishment or injury—summarized

Any person who willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition is guilty of a *felony, and upon conviction thereof shall be punished by imprisonment in the state prison for two, four or six years, or in the county jail for not more than one year.*

SEXUAL ASSAULT

As defined by Penal Code section 11165, subdivision (b) (1), sexual assault includes conduct in violation of the following sections:

Penal Code section 261. Rape—summarized

- is defined and interpreted by the courts as an act of sexual intercourse with a victim who is not the spouse of the perpetrator where:

  1. the victim is incapable of giving consent because of mental infirmity or because of physical disability and this is known by the perpetrator;
  2. the victim is forced or overcome by fear of immediate and unlawful bodily injury on the victim or another;
  3. the victim is prevented from resisting by any intoxicating, narcotic, or anaesthetic substance administered by or with the privity of the perpetrator;
  4. the victim is at the time unconscious of the nature of the act, and this is known to the perpetrator;
  5. the victim is deceived to believe that the perpetrator is his or her spouse;
  6. the victim's resistance is overcome by threats of retaliation to kidnap, falsely imprison, or to inflict extreme pain, serious bodily injury or death against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat;
  7. the victim is forced by the perpetrator's threats to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official.

This felony is punishable by imprisonment in the state prison for three, six, or eight years. (Pen. Code, § 264.)

Penal Code section 264.1. Rape in concert—summarized

- is defined as voluntarily acting in concert with another person, by force or violence and against the will of the victim, to commit an act of rape or penetration of genital or anal openings by foreign object, either personally or by aiding and abetting such other person. *This felony is punishable by imprisonment in the state prison for five, seven, or nine years.*

Penal Code section 285. Incest—summarized

- is defined and interpreted by the courts as marriage or acts of intercourse between the following persons: Parents and children; ancestors and descendants of every degree; brothers and sisters of half and whole blood; and uncles and nieces or aunts and nephews. (Civ. Code, § 4400.) *This felony is punishable by imprisonment in the state prison.**

Penal Code section 286. Sodomy—summarized

- is defined and interpreted by the courts as sexual contact between the penis of one person and the anus of another person and is *punishable as a misdemeanor or felony as specified:*

  1. the victim is under 18 years of age—*imprisonment in state prison* or county jail for a period not to exceed one year;* however, if the victim is under 16 years of age and the perpetrator is over 21 years—*it is punishable as a felony;**
  2. the victim is under 14 years of age and the perpetrator is at least 10 years older—*imprisonment in state prison for three, six, or eight years;*
  3. the victim is overcome by means of force, violence, duress, menace or fear of immediate and unlawful bodily injury on the victim or another person—*imprisonment in state prison for three, six, or eight years;*

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* Penal Code section 18 provides that: "Except in cases where a different punishment is prescribed by any law of this state, every offense declared to be a felony, or to be punishable by imprisonment in a state prison, is punishable by imprisonment in any of the state prisons for 16 months, or two or three years; provided, however, every offense which is prescribed by any laws of the state to be a felony punishable by imprisonment in any of the state prisons or by a fine, but without an alternate sentence to the county jail, may be punishable by imprisonment in the county jail not exceeding one year or by a fine, or by both."

4. any person who voluntarily aids and abets another person in the act of sodomy when the victim's will is overcome by means of force, or fear of immediate and unlawful bodily injury on the victim or another person—*imprisonment in state prison for five, seven, or nine years;*
5. any person who participates in an act of sodomy with any person of any age while confined in a state prison or in any local detention facility—*imprisonment in state prison* or county jail for not more than one year;*
6. any person who commits an act of sodomy, and the victim is at the time unconscious of the act—*imprisonment in state prison * or county jail for not more than one year;*
7. the victim is at the time incapable, due to mental infirmity or physical disability, of giving legal consent, and this is known or should be known by the perpetrator—*imprisonment in state prison* or county jail for not more than one year.*

Penal Code section 288. Lewd and lascivious acts with a child—summarized

- is defined and interpreted by the courts as causing any touching of a child under 14 years of age by the perpetrator or by the child at the direction of the perpetrator for the purpose of arousing, appealing to or gratifying the lust, or the passions, or the sexual desires of the person or the child. *This felony is punishable by imprisonment in state prison for three, six, or eight years.*

  If the perpetrator uses force, violence, duress, menace, or threat of great bodily harm, the crime is *punishable as a felony by imprisonment in state prison for three, six, or eight years.*

  The law also provides that in any arrest or prosecution under this section, the peace officer, district attorney and court shall consider the needs of the child victim and do whatever is necessary and constitutionally permissible to prevent psychological harm to the child victim.

Penal Code section 288a. Oral copulation—summarized

- is defined and interpreted by the courts as the act of copulating the mouth of one person with the sexual organ or anus of another person and is *punishable as specified:*
  1. if the perpetrator is over 21 and the victim is under 18—*imprisonment in the state prison* or in a county jail for not more than one year;*
  2. if the perpetrator is over 21 and the victim is under 16—*felony;**
  3. if the victim is under 14 and the perpetrator is at least 10 years older, or when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person—*punishable as a felony by imprisonment in state prison for three, six, or eight years;*
  4. any person voluntarily acts in concert with another person or aids in the commission of such an act and the act is accomplished against the person's will as described above—*punishable as a felony by imprisonment in state prison for five, seven, or nine years;*
  5. any person who merely participates in such an act while confined in state prison or a local detention facility not devoted exclusively to the detention of minors, with any person of any age, regardless of whether the act is consentual or whether or not accomplished by force or fear as described above—*imprisonment in the state prison* or county jail for not more than one year;*
  6. the victim is unconscious of the nature of the act and this is known to the perpetrator—*imprisonment in state prison* or county jail for not more than one year;*
  7. the victim is at the time incapable, due to mental infirmity or physical disability, of giving legal consent, and this is known to the perpetrator—*imprisonment in state prison* or county jail for not more than one year.*

* See footnote, ante, page 49

Penal Code section 289. Penetration of genital or anal opening by foreign objects—summarized

- is defined as the slightest pentration of a genital or an anal opening of another person using any foreign object, substance, instrument or device where such penetration is accomplished by force, violence, duress, or menace, or threat of immediate and unlawful bodily injury on the victim or on the person of another for the purpose of sexual arousal, gratification, or abuse—*punishable as a felony by imprisonment in the state prison for three, six, or eight years.*

  If the same act is committed with the same intent on a victim who is incapable, through mental infirmity whether temporary or permanent, of giving legal consent, and this is known to the perpetrator—*imprisonment in the state prison* or county jail for not more than one year.*

  Foreign object, substance, instrument or device shall include any part of the body except a sexual organ.

Penal Code section 647a. Child molestation—summarized

- is defined and interpreted by the courts as any act motivated by unnatural or abnormal sexual interest in children, which act would reasonably be expected to disturb, irritate, trouble or offend the victim, whether or not the victim is so affected; no touching of the victim is necessary—*imprisonment in the county jail for not more than six months or fine not exceeding $1,000 or by both.*

Acts occurring after entering a dwelling *are punishable by imprisonment in the state prison* or county jail for a period not exceeding one year.* For second and subsequent convictions of this section, the *perpetrator is punishable by imprisonment in state prison.** If previously convicted of 288, *conviction for any 647a violation results in imprisonment in state prison.**

NOTE: Although the child abuse reporting law does not specifically require reporting of other sexual offenses, such as assault with intent to commit rape and attempted rape, reports of these crimes may be required as child abuse generally, as are other crimes such as murder, mayhem or other assaults.

SEXUAL EXPLOITATION

As defined by Penal Code section 11165, subdivision (b) (2), sexual exploitation includes conduct in violation of the following sections of the Penal Code:

Penal Code section 311.2. Pornography—summarized

- prohibits the following activities regarding any obscene matter:

  1. importation, sale, or distribution;
  2. possession, preparation, publication, or printing with the intent to distribute or exhibit to others for commercial consideration;
  3. offering to distribute to others;
  4. exhibition to others for commercial consideration.

  (These prohibited acts are punishable as misdemeanors.)

- prohibits engaging in such prohibited acts if it is known that such obscene matter depicts a minor under age 18 engaging in or simulating defined sexual conduct.

  (Punishable as a felony by imprisonment in state prison for two, three, or four years or by a fine not exceeding $50,000 or by both fine and imprisonment.)

  In certain specified situations, this section is not applicable to motion picture operators, or projectionists acting within the scope of their employment.

Penal Code section 311.3. Minors and pornography—summarized

- with certain exceptions, prohibits the development, duplication, or exchange of any film, photograph, videotape, negative or slide depicting a child under 14 years of age engaged in defined sexual conduct.

  (First offense, misdemeanor—imprisonment in the county jail for not more than one year or a fine of up to $2,000 or both.)

  (Second offense, felony—imprisonment in state prison.)*

* See footnote, *ante*, page 49.

Penal Code section 311.4. Employment; use; coercion of minors; obscene acts—summarized

- prohibits the hire, employment or use of a minor to do or assist in specified sexual acts—*misdemeanor;*
- prohibits the promotion, employment, use, persuasion, inducement, or coercion of a minor under age 17 to engage in or assist others to engage in either posing or modeling alone or with others for the purposes of preparing a film, photograph, negative, slide, or live performance involving sexual conduct by a minor under 17 for commercial purposes—*felony;**
- also makes it a *felony** for any parent or guardian to permit a minor under age 17 and under his or her control to engage in such activity.

(These felony acts are punishable by imprisonment in the state prison for three, six, or eight years.)

The following sections of the Labor Code are also related to investigation of sexual exploitation cases:

Labor Code sections 1309.5–1309.6. Sale or distribution of pornography—summarized

- requires persons engaged in various activities related to the sale or distribution of films, photographs, slides or magazines depicting minors under 16 years of age engaged in defined sexual conduct to keep, for three years, confidential records of the names and addresses of persons from whom such material is obtained (§ 1309.5);
- failure to keep such records and make them available to law enforcement officers on request for a period of three years after obtaining or acquiring such material is a *misdemeanor which could result in assessment of a civil penalty of up to $5,000 for each violation* (§ 1309.6).

* See footnote, *ante*, page 49

OTHER CHILD ABUSE CRIMES

Although the foregoing codes were designed specifically for the protection of children, all crimes defined in the Penal Code are intended to protect children as well as adults.

INVESTIGATION OF CHILD ABUSE CRIMES*

The Rules of Search and Seizure

As in all other areas of criminal law, all searches, seizures and arrests made in the course of child abuse investigations must comport with the constitutional requirements of the Fourth Amendment. However, California courts have been inclined to consider the seriousness of the crimes involved and the helplessness of and danger to the victim of child abuse in deciding the reasonableness of a peace officer's actions.

This attitude was clearly expressed in *People* v. *Roman* (1967) 256 Cal.App.2d 656, 660, when the court held:

> *"In cases of suspected child-beating we prefer the police to consider any apparent injuries as serious ones until they have satisfied themselves to the contrary."*

The following facts gave rise to that holding: An entry into the defendant's apartment by a police officer without a warrant and a subsequent arrest of the defendant therein by the officer, also without a warrant, was proper, and the court properly instructed the jury, as a matter of law, that reasonable cause to make the arrest existed where it appeared that the officer investigating a complaint of child beating saw through the open door of the apartment a two-year-old child seated on the floor, his head down and his arms back, apparently unconscious. The officer thereupon entered the apartment, examined the child, noticed he had wounds on the back of his neck that appeared to be recent, observed blood around the child's nose and when he was asked if his dad had hit him, the child sobbed "Yes." *NOTE: Avoid leading questions, i.e., "Did your dad hit you?" Rather, use an indirect question—"What happened?"—and allow the victim to volunteer the answer.*

In other words, this was an exercise of the doctrine of necessity first articulated in *People* v. *Roberts* (1956) 47 Cal.2d 374, 377, in the following manner:

> *"The trial court found that the officers reasonably believed that someone inside the apartment was in distress and in need of assistance and that they entered for the purpose of giving aid. Necessity often justifies an action which would otherwise constitute a trespass, as where the act is prompted by the motive of preserving life or property and reasonably appears to the actor to be necessary for that purpose."*

This emergency doctrine, in the context of child abuse investigations, gives rise to the proposition that the seriousness of the offense is a relevant consideration in determining the reasonableness of the entry. This proposition was explained in *People* v. *Johnson* (1971) 15 Cal.App.3d 936, 941, in the following language:

> *" 'If we assume, for example, that a child is kidnapped and the officers throw a roadblock about the neighborhood and search every outgoing car, it would be a drastic and undiscriminating use of the search. The officers might be unable to show probable cause for searching any particular car. However, I should candidly strive hard to sustain such an action, executed fairly and in good faith, because it might be reasonable to subject travelers to that indignity if it was the only way to save a threatened life and detect a vicious crime. But I should not strain to sustain such a roadblock and universal search to salvage a few bottles of bourbon and catch a bootlegger.' "*

It is, thus, the seriousness of the crime and the helplessness of the potential child victim that have lead the courts to be more inclined to find an emergency circumstance requiring warrantless entry than in some other offenses.

Notwithstanding this seeming predisposition to find such a search reasonable, the courts have consistently required that the emergency be real and immediate. Thus, in *People* v. *Smith* (1972) 7 Cal.3d 282, 285–287, the police could not reasonably believe that it was an emergency situation where they discovered a child left alone outside his apartment in the late afternoon and where they then knocked on the door, received no answer and entered because they were faced with a quandary of what to do with the little child left

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* Information taken from *Peace Officer Law Report*, California Department of Justice, August 1977; *California Peace Officers Legal Sourcebook*, California Department of Justice (revised to January 1985).

alone. In other words, the court ruled the police could not enter the apartment for the purpose of making sure it was a safe place for the locked-out child to stay.

Contrast *People* v. *Smith*, *supra*, 7 Cal.3d 282, with *In re Dawn O.* (1976) 58 Cal.App.3d 160, 162–163, where the police officer was confronted with the problem of escorting a five-year-old child back to home at 10:30 p.m. and where he got the impression that there might be an unattended child inside the apartment.

There the officer knocked on the door with no response, entered, not for the purpose of securing the residence for the child, but for determining whether there was another child alone inside the apartment. In those circumstances, the court ruled that there was a legitimate and immediate emergency that the child might be left alone in a dangerous circumstance.

Another factor that must be considered in such circumstances is the type of information relied on by the police to reach their conclusion that there is an emergency circumstance. A case of particular interest is *People* v. *Brown* (1970) 12 Cal.App.3d 600, 605, wherein the court found that in a situation where a brother of the victim reported hearsay information to the police that his father was having sexual intercourse forcibly with the cerebral-palsied and retarded daughter of the family, and where the officer had heard other information from a probation officer who was working with the family about prior acts of sexuality in the house, their entry into the house pursuant to the emergency doctrine was valid even though the critical information was based on hearsay evidence. In so ruling, the court noted:

> *"The walls of privacy and domestic security may protect some crimes from observation and prevention by all who are unarmed with a warrant or probable cause for arrest, or who, even when so armed, failed to demand admittance and to explain the purpose for which entry is sought. But the rights of privacy and domestic security extend no impenetrable protective cloak against the prevention of a felonious assault upon a helpless victim whose right to physical and mental integrity outweighs the right of the aggressor to remain secure in his domestic sanctuary when used for such a purpose."* (*Id.*, at 605.)

In a similar ruling in *People* v. *Payne* (1977) 65 Cal.App.3d 679, 683, the court ruled that police officers, in forcing open a door in defendant's bedroom, did not act unreasonably or in violation of defendant's right to privacy or domestic security. Following reports by a reliable informant that the defendant molested children in a bedroom in his garage, police set up surveillance in which he was seen to pick up a male juvenile and drive him to the garage, whereafter defendant failed to respond to one of the investigating officers who repeatedly knocked on the bedroom door, announced that he was conducting a child molestation investigation, thus leading the officers to believe, despite the absence of any call for help by the juvenile, that an emergency situation had arisen in which a particularly heinous crime was being committed.

See also *People* v. *Johnson*, *supra*, 15 Cal.App.3d 936, 940. The court ruled that police officers may rely on the unsubstantiated report of a mother that her child has been abducted, due to the "heinous and dangerous nature of the reported crime," and that the officers responding should not be required to insist the reporting mother "prove her case in the street" before acting in reliance upon her representations. The court went on to note that "the concept of the need for swift action is a highly determinative factor in any evaluation of police conduct."

The extent of the search that is justifiable will also be measured in part by the seriousness of the danger. In *People* v. *Neth* (1970) 5 Cal.App.3d 883, 887, the court held that where the police have been summoned to a house because of the medical condition of a person there, "it is proper for the police to conduct a search in order to assist medical personnel in diagnosis and treatment of the victim, and that the ordinary rules of search and seizure are inapplicable under such circumstances."

It should, perhaps, be mentioned at this point that the peace officers' right to take a minor into temporary custody without a warrant pursuant to Welfare and Institutions Code section 305 does not exempt them from the warranty requirements of the Fourth Amendment. (See Appendix III.) Although the matter has not been directly ruled upon by a court, it would appear from related rulings that section 305 concerns only the peace officer's authority to take the child into custody, not the right to enter a private place protected by the Fourth Amendment, such as a home.

Finally, regarding the requirements of the Fourth Amendment in child abuse situations, it has been held that the exclusionary rule pursuant to the Fourth Amendment is not applicable to proceedings under Welfare and Institutions Code section 300 et seq. (See *In re Robert P.* (1976) 61 Cal.App.3d 310, 320–321.) In other words, in a civil proceding to determine the custody of a minor, evidence that would be excluded as a violation of the Fourth Amendment in a criminal proceeding would be admissible in the civil proceeding.

It should be strongly emphasized that the court is not suggesting that the rule of admissibility of illegally acquired evidence in a civil proceeding should be abused or taken advantage of as a means of evading the legitimate right to privacy protected by the Fourth Amendment. To quote the language of that court:

> *"The application of the exclusionary rule, primarily in criminal cases, may be necessary to insure that the law enforcement officers observe the proscriptions of the Fourth Amendment. However, we are mindful that just dispositions are frequently thwarted thereby and we see no necessity to extend the rule to the relatively few violations in child custody actions which are not criminal in nature. The possibility that such an extension might result in the suffering or deprivation of innocent children is too high a price to pay for any slight additional deterrent effect."* (*In re Robert P., supra*, 61 Cal.App.3d 310, 321.)

Evidentiary Matters

The prosecution of the crimes of child abuse is invariably difficult for the prosecutor. Normally, the only eyewitness to the crime will be the child victim and sometimes the spouse. For obvious reasons, effective incriminating testimony from such witnesses is difficult to acquire. However, familiarity with certain Rules of Evidence distinctive to child abuse and related crimes will enable the investigating officer to acquire and retain extremely valuable evidence that might otherwise not have been included in the investigative report.

SPOUSAL IMMUNITY

In most situations, one spouse cannot be forced to testify against the other in a criminal proceeding. In the case of child abuse crimes, Evidence Code section 972, subdivision (e)(1) states that the spousal privilege does not exist in a criminal proceeding in which one spouse is charged with the crime against the personal property of the other spouse or of a child of either, whether committed before or during the marriage. Thus the court, in *People* v. *Batres* (1969) 269 Cal.App.2d 900, 903, held that:

> *"The privilege of the wife and mother to refuse to testify against the husband and father under the circumstances here presented does not apply."*

ADMISSIBILITY OF EVIDENCE FOR COLLATERAL PURPOSES

Often evidence, including evidence of abuse of other children or other incidents unrelated to the incident under investigation, may be admitted in court to show an accused or other witness is lying, to show an accused's motive or intent, or that a plan or scheme was common to the incidents.

Thus, photographs of an accused sexually abusing other boys have been held admissible evidence (*People* v. *Reeves* (1980) 105 Cal.App.3d 444, 453), as has similar sexual activity between a father and another victim daughter in an incest case. (See *People* v. *Covert* (1967) 249 Cal.App.2d 81, 87–89; *People* v. *Kazee* (1975) 47 Cal.App.3d 593, 595–596; *People* v. *Stanley* (1967) 67 Cal.2d 812, 819–820; and *People* v. *Tassell* (1984) 36 Cal.3d 77, 83–87.)

PEACE OFFICER'S RECORDED STATEMENTS OF A CHILD WITNESS

Perhaps the most important rule of evidence in sexual abuse cases is the exception to the hearsay rule which allows a police officer to testify in court as to statements made by the victim at the time of the arrest. Due to the nature of the crime and the relationship of the victim to the defendant in sexual abuse cases, such victims often do not

make strong witneses. It is therefore critical that the investigating officer at the scene of the crime takes down verbatim all statements made by the child at the time of the arrest. Such evidence may be critical to the prosecution. (See *People* v. *Gentry* (1969) 270 Cal.App.2d 462, 468–473; Evid. Code, § 1237.)

VICTIM'S STATEMENTS MADE TO OTHERS

In child abuse cases, statements of the victim made to others can be critical to the prosecution's case, especially where the child is very young. Spontaneous statements made to others immediately after the event, whether "recorded" or not, are admissible. Thus, the mother of a 3-year-old was allowed to testify that the child told her "the man wet my pants" and "that man stick his pee pee in my bummy" to convict a suspect of sexual abuse. (*People* v. *Orduno* (1978) 80 Cal.App.3d 738, 745–747.)

CORROBORATION OF TESTIMONY; ACCOMPLICE

It is important to note that the courts have held that a victim of sexual abuse is not an accomplice. To be an accomplice, one must knowingly, voluntarily and with common interest unite with the principal offender in the commission of the crime. (*People* v. *Fuentes* (1967) 253 Cal.App.2d 969, 974.) This is an important interpretation because Penal Code section 1111 forbids conviction upon the testimony of an accomplice, unless it is corroborated by other evidence that will tend to connect the defendant with the commission of the crime. Such corroboration may be circumstantial or gained from the defendant's admission, statements, testimony or conduct as a witness.

Obviously, flight from the jurisdiction constitutes an implied admission by conduct and constitutes corroboration of the charged offense. However, interestingly, the court in *People* v. *Hurd* (1970) 5 Cal.App.3d 865, 876, held that silence in the face of accusatory statements constitutes sufficient corroboration for the purpose of Penal Code section 1111. The investigating officer, therefore, should pay particular attention to the conduct, statements or lack of statements by the defendant at the time that he is confronted with the allegation.

In *People* v. *Batres, supra*, 269 Cal.App.2d 900, 903, the court held that a daughter below the age of consent is not an accomplice in a crime of incest with her father. Thus her testimony need not be corroborated. Similarly, in a prosecution for sexual offenses against two young boys pursuant to Penal Code sections 288 and 288a, where the boys are under the age of 14, they too could not be accomplices to the crime and their testimony need not be corroborated.

Finally, we consider the test of whether one spouse is an accomplice to the crime of child abuse charged against the other spouse. In a trial on Penal Code section 273a, the mere fact that on some occasion or another the other spouse may have spanked the child does not necessarily mean that she thereby violated the provisions of section 273a.

Summary

An investigator of child abuse cases must never dismiss evidence as unimportant or unusable. Even minor or seemingly unrelated incidents can be uniquely important in these cases. It is also important for the investigating officer to be alert to obtain evidence at the initial stages of investigation which otherwise may be lost. A peace officer must take care that in his or her concern for the child, evidence is not inadvertently left uncollected. Physical evidence is of critical importance for the successful prosecution of these cases.

GUIDELINES FOR INVESTIGATION OF CHILD ABUSE CASES IN GROUP HOMES OR INSTITUTIONS

Title 11, California Administrative Code Sections 930–930.8. "Guidelines for Investigation of Child Abuse in Group Homes or Institutions."

930. Scope.

In accordance with Section 11174 of the Penal Code, this article applies to the investigation of suspected child abuse in group homes or institutions reported under Section 11166 of the Penal Code and adopts guidelines to insure investigations of such reported child abuse are conducted in accordance with this article. The guidelines are applicable when the abuse reported is child abuse as defined in Section 11165(f) of the Penal Code and not a mere complaint as defined in Section 930.3(m).

931. Purpose.

(a) The purpose of the adopted guidelines is

(1) to insure that the investigations of child abuse occurring in group homes or institutions are timely, complete, and coordinated among the responsible agencies;

(2) to require the appropriate agency to conduct the investigation in accordance with the guidelines;

(3) to insure that all appropriate authorities are informed so that timely and appropriate measures will be taken to guard against future institutional abuse; and

(4) to properly document reasons for any disposition made.

(b) The intent of these administrative regulations is to foster a high level of cooperation, communication, and mutual respect between all agencies involved in the investigation and administration of institutional abuse cases. However, these guidelines are not intended to prohibit, impede or excuse law enforcement agencies in any way from conducting independent investigations into alleged criminal activity, or from carrying out the mandate of protecting life and property. Nor are they intended to preclude other government agencies from performing their lawful duties that may require concurrent, independent investigation or actions.

930.2. Use of Guidelines.

The guidelines set forth in this article shall be used in the investigation of suspected child abuse in a group home or institution including neglect as defined in Penal Code Section 11165(c).

930.3. Definitions.

For the purpose of this article, the following glossary of terms shall apply whenever the terms are used:

(a) ***Child Abuse Reporting Law*** means Penal Code Section 11165, et seq.

(b) ***Mandated reporter*** means any person required to report pursuant to Penal Code Section 11166.

(c) ***Group home or institution*** means a non-family residential home of any capacity that provides 24-hour care in a group setting for children in need of personal services, protection, supervision, assistance, guidance or training essential for sustaining the activities of daily living or for the protection of the child including group homes or institutions exempt from licensing requirements of Health and Safety Code Section 1508 under Section 1505 of that code and Title 22, California Administrative Code Section 80105.

(d) ***Child*** means a person who is under 18 years of age.

(1) ***Preschool age*** means a child from the age of two (2) up to the age of six (6).

(2) ***Infant*** means a child who is under two (2) years of age.

(e) ***Child protective agency*** means a police or sheriff's department, a county probation department, or a county welfare department.

(f) ***Law enforcement agency*** means a police or sheriff's department, whichever of the two departments has jurisdiction.

(g) ***Child welfare agency*** means a county probation or county welfare department, whichever of the two departments has responsibility for investigation of Welfare and Institutions Code Section 300 cases.

(h) ***Child placement agency*** means any agency, public or private, licensed to engage in finding homes or other facilities for the placement of children for temporary or permanent care or adoption, including but not limited to probation departments, county welfare departments, adoption agencies, and agencies that place mentally or developmentally disabled children.

(i) ***Voluntary Inter-Agency Investigation Team*** means a local voluntary association of law enforcement agencies, county welfare and probation departments, child placement agencies, and group home or institution licensing agencies established for the sharing of information and co-ordination of investigations of reports of child abuse occurring in group homes or institutions.

(j) ***Investigation*** means any activity by a child protective agency in response to a report of suspected child abuse including: required reporting; assessing the nature and seriousness of the abuse; required interviews; conducting interviews, gathering and perserving evidence; determining whether the report is founded or unfounded; taking measures to ensure the safety of the children, notification of action taken or disposition after completion of the investigation as required by this article; notifying mandated reporters as required by Section 11170 of the Penal Code and notifying all appropriate agencies of the results of the investigation, of any formal or informal action taken by the appropriate agency, and of the final disposition.

(k) ***Serious abuse*** means all sexual assault and severe neglect as defined in Section 11165(c)(1) of the Penal Code and any act or omission proscribed by Sections 273a(1) or 273d, or any infliction of non-accidental injury on a child such as assaults, batteries or other crimes involving physical harm.

(l) ***Other abuse*** means general neglect as defined in Penal Code Section 11165(c)(2) or any act or omission proscribed by Section 273a(2) of the Penal Code.

(m) ***Complaint*** means a report concerning any non-criminal act or omission that infringes upon the basic rights of a child including those enumerated in Section 80341, Title 22 of the California Administrative Code or concerning any program policy, regulatory procedure or practice of any group home or institution, or any non-criminal act or omission in violation thereof.

930.4. Reporting Abuse in Group Homes or Institutions.

(a) All employees, personnel or administrators of group homes or institutions and all other mandated reporters shall report any suspected child abuse occurring in group homes or institutions to a child protective agency as required by Section 11166 of the Penal Code. The report to the child protective agency is required in addition to any other reports of child abuse which may have been made to the state or county licensing agency or any other public or private agency.

(b) All employees of a child protective agency shall report all suspected abuse and may also investigate that abuse. However, other mandated reporters do not have the responsibility to determine whether or not suspected child abuse has occurred. The responsibility to investigate the abuse lies with the child protective agency which makes that determination in its investigatory capacity.

(c) With the exception of general neglect cases as defined in Section 11165(c)(2) of the Penal Code, each child protective agency investigating reported child abuse in group homes or institutions shall forward a preliminary report in writing to the Department of Justice. In cases investigated by a Voluntary Inter-Agency Investigation Team only one preliminary report need be forwarded to the Department of Justice as required by Section 11169 of the Penal Code.

(d) Unless a report of suspected abuse is initially determined to be unfounded and when the investigation of or prosecution for child abuse will not be compromised, the investigating child protective agency shall immediately notify the child placement agency involved, the probation department, the agency responsible for licensing the group home or institution and the administrator of the group home or institution of the alleged abuse. If the child involved is not a dependent child or ward of the court, the parent or guardian of the child shall also be notified. If the child is a dependent child or ward of the court, the child placement agency shall determine whether or not to inform the child's parent or guardian of the alleged abuse.

930.5. Assessing the Nature and Seriousness of the Suspected Child Abuse.

Except as provided in Section 930.7, upon receipt of the report of suspected child abuse the child protective agency shall make a determination of the nature of the suspected abuse and whether it constitutes serious abuse as defined in this article.

(a) If the suspected child abuse appears to be serious abuse, the law enforcement agency shall investigate immediately, take measures as needed to protect the child, and continue the investigation in accordance with the standard procedures set forth in Section 930.6 of this article.

(b) If the suspected child abuse appears to involve other abuse, the child welfare agency shall investigate in accordance with the standard procedures set forth in Section 930.6 of this article. However, if such abuse occurs in a group home or institution under the authority of the child welfare agency, the law enforcement agency shall investigate.

(c) If the suspected child abuse appears to involve only a complaint, the report shall be referred to the licensing agency of the group home or institution and to the county welfare department.

(d) If at any point in the investigation the law enforcement agency determines that the incident does not involve serious abuse, the child welfare agency shall be notified immediately, and it shall continue the investigation.

(e) If at any point in the investigation the abuse initially thought to be other than serious abuse is determined to be serious abuse, the investigation shall be stopped, the law enforcement agency shall be notified immediately, and it shall continue the investigation.

930.6. Standard Procedure.

(a) Except as provided in Section 930.7 the standard procedures set forth below shall be followed to determine whether the reported child abuse occurred, whether remedial or protective action is necessary to ensure the safety of the child and other children in the group home or institution, to identify the perpetrator, and to provide a basis for assessment by appropriate independent agencies of the suitability of the group home or institution for placements.

(b) The guidelines established pursuant to Penal Code Sections 13516 and 13517 for the investigation of sexual assault and child abuse and neglect shall be consulted and may be followed where appropriate in investigating child abuse occurring in group homes or institutions. Copies are available through the Commission on Peace Officer Standards and Training [1601 Alhambra Boulevard, Sacramento, CA 95816-7083], Attention: Publications.

(c) ***Required interviews.*** Initial interviews with the victim, the reporting parties if known, and other witnesses are required to determine the circumstances leading to the report, when the abuse occurred, the nature and extent of the abuse and whether an incident of child abuse has occurred in the facility before.

(1) ***Reporting Party***—The person(s) initially reporting the abuse under Section 11166 of the Penal Code. At all times great care shall be exercised to maintain the confidentiality provided by Section 11167 of the Penal Code for persons who report under the Child Abuse Reporting Law.

(2) ***Victim***—whether the victim is an infant, preschool, or older child, it is preferable that an interview be conducted when possible by trained personnel with sensitivity to the psychological and emotional needs and background of children the victim's age.

(3) ***Other Witnesses***—the following persons shall be contacted where warranted by the circumstances:

(A) the administrator and employees of the group home or institution and the licensee or owner,

(B) the placement worker for the child,

(C) other selected children in the home,

(D) the placement worker for other selected children in the home,

(E) authorities and teachers at any school the child may attend,

(F) the licensing worker for the group home or institution, and

(G) any other person who either may have witnessed the abuse or who may provide history or other related information concerning the victim or participants in the abuse.

(d) Conducting Interviews

(1) When appropriate, the interview should be conducted in the group home or institution. In any event, the investigator should view the premises.

(2) If possible, the child should be interviewed first, separately and in private. The investigator should be sensitive to the child's age and should conduct the inquiry in a nonthreatening atmosphere with appropriate assurances given to the child. Information should be solicited in a concerned and nonpunitive manner, and the child should be encouraged to give explanations regarding the reported abuse with the view toward eliciting specific details.

The child should be examined for injuries hidden by clothing or other garments, particularly infants and preschool children. Any statements of the child should be paraphrased and recorded in a narrative form.

(3) After the child and other selected children in the home have been interviewed, the employees and administrator and licensee or owner of the group home or institution should be interviewed.

(e) Gathering and Preserving Evidence

(1) The Department of Justice Child Abuse Unit shall be contacted to obtain any relevant information available, including whether other incidents have been reported involving the same group home or institution, the same child or children or the same person(s) who may have been involved in the reported abuse.

(2) Where authorized by law, photographs shall be taken and any tangible evidence of abuse shall be collected and preserved.

(A) Photographs should be taken of all visible physical injuries, even if the injuries appear slight. Photographs of conditions affecting the child's general appearance and demeanor should also be taken, especially in cases of neglect or failure to thrive.

(B) Physical evidence such as implements used to inflict the abuse, articles of clothing, fingerprints, or other related items should be collected and preserved. Where appropriate all such items shall be marked by the investigator for identification, placed in sealed containers, and a record made of the chain of custody for each item.

(C) Diagrams, photographs and measurements of the premises should be made, in particular of the scene of alleged abuse.

(D) Medical examination of the child:

1. Where the abuse involved a sexual assault, a medical examination of the child shall be conducted by a licensed physician. The guidelines prescribed by regulations in chapter 3, title 22, California Administrative Code shall be used.

2. Where serious abuse is suspected or the victim is an infant, a medical examination should be conducted by a licensed physician. Serious physical harm especially in infants may not be readily observable but can be indicated by the nature of the reported abuse. All evidence of abuse resulting from a medical examination, including but not limited to skeletal and dental x-rays, specimens, and blood samples, must be obtained and preserved.

(f) Determining Whether the Report is Unfounded

(1) If during the course of an investigation the report of suspected abuse proves to be unfounded because the report is inherently improbable or admittedly false, or because there is no evidence to substantiate an allegation of child abuse made by an anonymous reporter, or because the incident would not constitute child abuse as defined in Section 11165(g) of the Penal Code, the investigating agency shall inform the Department of Justice.

(2) Before a report may be considered unfounded, it must be proven that the alleged abuse did not occur. Alternative explanations for the alleged abuse, mere conflicts in statements of the victim and/or other witnesses, or lack of evidence to prove the allegation factually true are not alone adequate for a determination that a report is unfounded.

(g) Taking Measures to Ensure the Safety of the Child

(1) Removal of the child and placement in protective custody shall be done immediately where the child's condition or surroundings reasonably appear to be such as to jeopardize the child's welfare. After removal of the child the responsibility for alternative placement lies with the agency which placed the child in the group home or institution.

(2) If the investigation is being conducted by a law enforcement agency and probable cause to arrest exists, the suspect(s) shall be taken into custody where appropriate.

(3) If probable cause to arrest does not exist, any person(s) suspected of child abuse may be requested to leave the group home or institution voluntarily until completion of the investigation. If

the suspect(s) is a child in the group home or institution, removal of that child should be considered. Removal should be accomplished by a law enforcement officer, by the child placement agency or by cooperation with that child's parent or guardian, or by order of the court, whichever is appropriate.

(4) On-site monitoring of the licensed group home or institution by the appropriate licensing agency until completion of the investigation should be considered, especially where staff or administrative personnel involvement in the alleged abuse is suspected. If the group home or institution is unlicensed, monitoring by the child welfare agency should be considered.

(h) Notification of Action Taken After Completion of the Investigation or Final Disposition of the Matter

In addition to the notification required in Section 11170 of the Penal Code, all persons and agencies listed below shall be notified in writing by the investigating agency of the results of the investigation, any action taken, whether the action be formal or informal, and/or the final disposition of the matter:

(1) The Department of Justice, Division of Law Enforcement.

(2) The child placement agency involved.

(3) The licensing agency of the group home or institution.

(4) The probation department and the welfare department in the county in which the group home or institution is located.

(5) The administrator of the group home or institution.

(6) The parent or guardian of the child involved if the child is not a dependent child or ward of the court.

(i) Actions That Shall or May be Taken Upon Receipt of the Notice Required on 930.6(h)

Upon receipt of the notice required in Section 930.6(h), the persons and agencies notified shall or may take action as appropriate, including but not limited to the following:

(1) The Department of Justice, Division of Law Enforcement shall file the copy of the notification with the preliminary report required by Section 930.4(C) and Section 11169 of the Penal Code;

(2) The child placement agency involved may;

(A) discontinue use of the group home or institution;

(B) notify other child placement agencies as long as the identity of the child involved is not disclosed and disclosure does not violate sanctions against disseminating confidential information or sensitive information that is contrary to the best interest of the involved children and/or their parent so that appropriate action for the protection of all children in the home may be taken; and

(C) notify the parent or guardian of the child involved if the child is a dependent child or ward of the court;

(3) The licensing agency may revoke or suspend the license of the group home or institution;

(4) The probation department and the welfare department in the county in which the group home or institution is located may recommend to the juvenile court whether the placement should be revoked, whether the suitability of the placement of all children in the home should be reviewed, or whether other proper judicial relief should be invoked;

(5) The administrator of the group home or institution may make approporiate personnel, policy, or procedural changes within the group home or institution;

(6) The parent or guardian of the child involved if the child is not a dependent child or ward of the court may remove the child.

930.7. Assessment of Abuse and Standard Procedures for Voluntary Inter-Agency Investigation Teams.

In counties having a Voluntary Inter-Agency Investigation team, procedures and standards for assessment and investigation of child abuse which are established and agreed upon by the agencies involved may be followed in lieu of the guidelines in Section 930.5 and 930.6, so long as they are not inconsistent therewith and all notifications required therein are made.

930.8. Enforcement of Guidelines.

To ensure that every investigation of alleged child abuse in group homes or institutions is conducted in accordance with the guidelines set forth in this Article, the Department of Justice shall implement the following procedures.

(a) The Department of Justice, Division of Law Enforcement, shall monitor investigations of incidents of suspected child abuse in group homes or institutions reported under Section 11169 of the Penal Code to ensure that each incident is being investigated and that reasonable progress is made in the investigation. The Division shall maintain records which shall include the case file name or report number of each such incident, the county and agency conducting the investigation, the date of the incident and the date reported to the investigative agency, information concerning any action taken, upon completion of the investigation or final disposition of the matter, and the notification submitted under Section 930.6(h)(4).

(1) The records required by this section shall be compiled from reports submitted pursuant to Section 11169 of the Penal Code and Sections 930.6(f) and (h) of this article, and may include information from records maintained by the Department of Justice on arrest and conviction.

(2) Records maintained by the Department of Justice on arrests for child abuse related charges shall be used to verify whether or not reports required by this Article or the Child Abuse Reporting Law have been submitted. If such reports have not been submitted, the Department shall request that the appropriate child protective agency in the county where the arrest occurred submit the required reports.

(b) The Office of the Attorney General shall be notified by the Division of Law Enforcement of any incidents of suspected child abuse in group homes or institutions reported under Section 11169 of the Penal Code:

(1) where it appears reasonable progress is not being made in the investigation,

(2) where reports required by Section 11169 of the Penal Code or by this article have not been submitted, or

(3) where any of the information required for the Division of Law Enforcement to monitor the investigation is not made available by the appropriate agencies.

CONFIDENTIALITY

Access to Reports of Suspected Child Abuse

Confidentiality regarding the identity of the reporters, the reports, and the records maintained by child protective agencies and the Department of Justice Child Abuse Central Registry is strictly controlled.

Identity of Reporters

(Pen. Code, § 11167, subd. (c))

The identity of all persons who report known or suspected child abuse is confidential and may only be disclosed as follows:

- Between child protective agencies
- To counsel representing a child protective agency
- To the district attorney in a criminal prosecution
- To the district attorney in an action initiated under Welfare and Institutions Code section 602 (wards; minors violating laws defining crime) arising from alleged child abuse
- To the child's counsel appointed pursuant to Welfare and Institutions Code section 318
- To the county counsel or district attorney in an action initiated under Civil Code section 232 (termination of parental rights) or Welfare and Institutions Code section 300 (dependent children)
- By court order
- When the reporter waives confidentiality

Reports of Suspected Child Abuse

(Pen. Code, § 11167.5)

Required reports of suspected child abuse from child protective agencies to the Department of Justice, and the information contained in those reports, by child protective agencies and the Department of Justice Central Registry are confidential and may only be disclosed as follows:

- To those same persons to whom a reporter's identity may be disclosed
- To persons or agencies to whom disclosure of registry and investigative information is permitted under Penal Code section 11170, subdivision (b)
- To persons or agencies with whom investigations of child abuse are coordinated under the Regulations for the Investigation of Child Abuse in Group Homes or Institutions (11 Cal. Admin. Code, §§ 930–930.8)
- To multidisciplinary personnel teams as defined in Welfare and Institutions Code section 18951, subdivision (d)

Sharing Information With Investigators

(Pen. Code, § 11167, subd. (b))

Persons who report known or suspected child abuse may also give information relevant to the incident of child abuse to an investigator from a child protective agency who is investigating the case.

Access to School Records

School districts may release information from pupil records without written parental consent or judicial order in connection with an emergency. Student records information may be given to appropriate persons in connection with an emergency if the knowledge of such information is necessary to protect the health or safety or a student or other persons. (Ed. Code, § 49076, subd. (b)(1).) Thus, if police need information held by a school about a child in an emergency situation necessary to protect the health or safety of that student or another person, that school must disclose the information to the police. This is a closely limited rule and, in fact, replaces a statute that had previously given more rights of disclosure to the police.

Further, section 47076, subdivision (a)(4) of the Education Code permits release to state and local authorities to whom such information is specifically required to be reported pursuant to state statute adopted prior to November 1, 1974.

Thus, if police and others need information from school records, Education Code sections 49076, subdivisions (a)(4) and (b)(1) allow a child's records to be disclosed to the extent that such information is specifically required to be reported pursuant to state law. When grounds for access are not clearly established, consultation with county counsel is advisable.

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